

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF ROBERT D. STOWE

23

24

25

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1 (The following is the Rule 30.02(f)  
2 Deposition of ROBERT D. STOWE, taken pursuant to  
3 Notice of Taking Deposition, by videotape, at the  
4 offices of Robins, Kaplan, Miller & Ciresi, Attorneys  
5 at Law, 2800 LaSalle Plaza, 800 LaSalle Avenue,  
6 Minneapolis, Minnesota, on September 30, 1997,  
7 commencing at approximately 8:35 o'clock a.m.)

8

9 APPEARANCES:

10 On Behalf of the Plaintiffs:

11 Martha K. Wivell  
12 Robins, Kaplan, Miller & Ciresi LLP  
13 Attorneys at Law  
14 2800 LaSalle Plaza  
15 800 LaSalle Avenue  
16 Minneapolis, Minnesota 55402

17

18 On Behalf of Philip Morris Incorporated:

19 Randall Frykberg  
20 Dorsey & Whitney  
21 Attorneys at Law  
22 Pillsbury Center South  
23 220 South Sixth Street  
24 Minneapolis, Minnesota 55402-1498

25

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1       On Behalf of Brown & Williamson Tobacco  
2       Corporation:

3           Tony L. Richardson  
4           Kirkland & Ellis  
5           Attorneys at Law  
6           200 East Randolph Drive, 59th Floor  
7           Chicago, Illinois   60601

8  
9           Jack M. Fribley  
10          Faegre & Benson  
11          Attorneys at Law  
12          2200 Norwest Center  
13          90 South 7th Street  
14          Minneapolis, Minnesota   55402

15  
16       On Behalf of Lorillard Tobacco Company:

17          Howard A. Roston  
18          Doherty, Rumble & Butler  
19          Attorneys at Law  
20          2800 Minnesota World Trade Center  
21          30 East Seventh Street  
22          St. Paul, Minnesota   55101-4999

23  
24  
25

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1 On Behalf of B.A.T. Industries P.L.C.:

2 Michael S. Komar

3 Simpson, Thacher & Bartlett

4 Attorneys at Law

5 425 Lexington Avenue

6 New York, New York 10017-3954

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1 P R O C E E D I N G S

2 (Witness sworn.)

3 ROBERT D. STOWE,

4 called as a witness, being first duly

5 sworn, was examined and testified as

6 follows:

7 ADVERSE EXAMINATION

8 BY MS. WIVELL:

9 Q. Sir, would you introduce yourself to the ladies  
10 and gentlemen of the jury?

11 A. Robert D. Stowe.

12 Q. Sir, by whom are you employed?

13 A. Brown & Williamson Tobacco.

14 Q. How long have you been employed by Brown &  
15 Williamson?

16 A. Approximately 16 years.

17 Q. What's your current position?

18 A. Current position is divisional vice-president of  
19 marketing communications.

20 Q. What do you do as director -- as divisional  
21 vice-president of marketing communications?

22 A. The primary responsibilities of the divisional  
23 vice-president of marketing communication is really  
24 in charge of all consumer communication from the  
25 company of the brands to consumers.

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1 Q. Well by "consumer communications" do you include  
2 advertising?

3 A. That is correct.

4 Q. All right. How do you define "advertising"?

5 A. Well advertising in -- I guess I could give you  
6 a number of definitions, but advertising the way I  
7 would see it is a translation of a brand strategy  
8 into a graphic expression, as one definition.

9 Q. Is that a definition that's been utilized within  
10 Brown & Williamson during the 16 years you've been  
11 there?

12 A. I'm not sure. I was defining it as the way I  
13 would understand advertising.

14 Q. Well is that the definition that you've used  
15 during the 16 years you've been at Brown &  
16 Williamson?

17 A. Well, it -- The advertising would be a --  
18 certainly a component of the marketing activities  
19 that take place, and communicating to consumers  
20 through advertising, and advertising in its number of  
21 forms, would probably be very close to the definition  
22 I provided to you.

23 Q. Now sir, you said that advertising was a  
24 component of marketing. What is marketing?

25 A. Well in the -- in the context of the whole

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1 umbrella of marketing there's a number of components  
2 you may have, the product, promotion, price, you  
3 know, there's -- it's a very broad area and  
4 discipline of business under which there's a number  
5 of components that incorporate the whole concept of  
6 marketing.

7 Q. Sir, you would agree that Brown & Williamson  
8 engages in advertising for its cigarette products;  
9 right?

10 A. Yes, we advertise our brands.

11 Q. All right. And by "brands" you're talking about  
12 different types of cigarettes; right?

13 A. Yes, brand names.

14 Q. All right. And Brown & Williamson has, for the  
15 last 50 years, advertised its cigarettes, haven't  
16 they?

17 A. That is correct.

18 Q. All right. And you said that advertising is  
19 just one component of marketing. Are there other  
20 kinds of marketing strategies that Brown & Williamson  
21 has used over the years?

22 A. Yeah, as I mentioned, price may be a component,  
23 the promotion is certainly another component as well  
24 that I'd mentioned.

25 Q. What do you mean when you talk about promotion?

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1 A. Consumer promotions, whether it is a -- well, a  
2 consumer promotion directed towards maybe it may be a  
3 price-delivery mechanism or an -- a purchase  
4 incentive, if somebody would buy the product they  
5 would receive an incentive to go along with that.

6 Q. Let me see if I can -- if I'm understanding this  
7 right.

8 One thing that Brown & Williamson has done to  
9 promote its products is to offer price discounts; is  
10 that right?

11 A. That's one mechanism, yes.

12 Q. And that's part of marketing; right?

13 A. It deals with the price, yes.

14 Q. Okay. And another thing that Brown & Williamson  
15 has done over the years is they have offered coupons  
16 that if you buy a pack of their cigarettes you'll get  
17 coupons which you can collect and then turn in so you  
18 could get a prize or a reward; right?

19 A. Prize or reward, probably a gift, something for  
20 the purchase, yes.

21 Q. It's called a premium, isn't it, sir?

22 A. That is correct.

23 Q. In other words, you could collect coupons and  
24 save them up and send in and get a nice locket;  
25 right?

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1 A. You could receive a premium. I'm not sure if a  
2 locket was one of the selections, but yes.

3 Q. All right. Over the years people have been able  
4 to send in, and after saving coupons turn those  
5 coupons in for everything from tea sets to little  
6 pins; right?

7 A. May have. I'm not sure of all the selections,  
8 yes, but generally, yes, the collection of premiums  
9 we have a couple of brands that that was clearly one  
10 of the objectives of the brand or one of the  
11 components of the product was premiums.

12 Q. And that's part of marketing, isn't it?

13 A. I would say so, yes.

14 Q. And Brown & Williamson has utilized those  
15 techniques that we've just been talking about for the  
16 last 50 years, haven't they?

17 MR. RICHARDSON: Objection, lacks  
18 foundation.

19 Q. You can answer.

20 A. Oh. To the best of my knowledge I mean, we have  
21 used that type of activities.

22 MS. WIVELL: I'd like to go off the record  
23 for a minute.

24 THE REPORTER: Off the record, please.

25 (Recess taken from 8:41 to 8:46 a.m.)

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1 BY MS. WIVELL:

2 Q. Sir, before you became divisional vice-president  
3 of marketing and communications, did you hold any  
4 other positions at Brown & Williamson?

5 A. Yes, I did.

6 Q. What were those positions?

7 A. The last -- The job prior to my current position  
8 was area vice-president, southeast.

9 Q. In a particular division or area?

10 A. Sales primarily, field sales.

11 Q. Field sales?

12 A. That's correct.

13 Q. What do you mean by "field sales"?

14 A. Responsibilities included the -- the management  
15 of the field sales employees in a geographic area,  
16 mine was the southeast United States.

17 Q. Sir, you understand that the plaintiffs in this  
18 case served a deposition notice on Brown & Williamson  
19 and asked them to provide someone to qualify --  
20 qualified to testify about certain matters; right?

21 A. That's correct.

22 Q. And we listed several different topics we wanted  
23 someone to talk about. You're aware of that; right?

24 A. Umm-hmm. Yes.

25 Q. You have to answer out loud.

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- 1 A. Yes, I understand.
- 2 Q. Have you been deposed before, sir?
- 3 A. Yes, I have.
- 4 Q. In a smoking-and-health-related case?
- 5 A. I was -- Yes, once.
- 6 Q. What case was that?
- 7 A. The Barnes.
- 8 Q. Now sir, let me ask you this. Among the topics
- 9 that the plaintiffs listed for Brown & Williamson to
- 10 produce a witness to testify about, plaintiffs asked
- 11 that someone knowledgeable about advertising,
- 12 marketing and promotion of cigarettes and youth
- 13 smoking be provided.
- 14 A. (Nodding.)
- 15 Q. And you understand that you're the person that
- 16 Brown & Williamson has designated to speak on those
- 17 topics; right?
- 18 A. That is correct.
- 19 Q. All right. And can we agree that -- I'm sorry.
- 20 Strike that.
- 21 You understand that this case is brought by the
- 22 State of Minnesota and Blue Cross\Blue Shield; right?
- 23 A. Yes, I do.
- 24 Q. And you were the person designated to speak on
- 25 the topics of advertising, marketing and promotion of

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1 cigarettes and youth smoking in this case; right?

2 A. That is correct.

3 Q. And you've agreed to be Brown & Williamson's

4 spokesperson for this deposition, haven't you?

5 A. Yes.

6 Q. And you have authority to be Brown &

7 Williamson's spokesperson as you sit here today;

8 right?

9 A. Yes.

10 Q. Now sir, you would agree that Brown & Williamson

11 advertises its cigarettes.

12 A. Yes, I would.

13 Q. And one of the reasons it advertises its

14 cigarettes is because advertising helps sell

15 cigarettes, doesn't it?

16 A. I'm not sure if it does, actually.

17 Q. Well -- I'm sorry.

18 A. Actually, I'm not sure if it does.

19 Q. Well, sir, Brown & Williamson over the years has

20 spent literally millions of dollars advertising its

21 cigarettes; right?

22 A. That is correct.

23 Q. Do you know who a gentleman by the name of

24 Parrack, P-A-R-R-A-C-K, is?

25 A. I know the gentleman, yes.

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1 Q. All right. Is he still employed by Brown &  
2 Williamson?  
3 A. No, he's not.  
4 Q. He's retired from Brown & Williamson; right?  
5 A. I'm not sure.  
6 Q. Well sir, you understand that he was  
7 vice-president of domestic marketing for Brown &  
8 Williamson; right?  
9 A. Yes.  
10 Q. Do you know a person by the name of R. L.  
11 Chambers?  
12 A. The name is not familiar to me, no.  
13 Q. Well sir, if Mr. Parrack had said that  
14 advertising moves cigarettes, would you disagree with  
15 him?  
16 MR. RICHARDSON: Objection to the form of  
17 the question.  
18 Q. You can answer.  
19 A. I'm not -- I'm not sure of your question on  
20 agreeing to something that Mr. Parrack may have  
21 said.  
22 There's a number of views of the role of  
23 advertising, but in terms of proving it moves  
24 cigarettes, I'm not sure.  
25 (Plaintiffs' Exhibit 4417 marked for

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1 identification.)

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been marked as  
4 Plaintiffs' Exhibit 4417, this document is entitled  
5 "History and Key" market "Trends in the U.S.  
6 Cigarette Market"; right?

7 A. Yes.

8 Q. And for the record, the beginning Bates number  
9 of Exhibit 4417 is 670624932; right?

10 A. Yes.

11 Q. Now sir, this is a big document, but I'd like  
12 you to turn to the page that ends with Bates number  
13 223. There do you see, toward the top of the page,  
14 the heading "Advertising Dynamics"?

15 A. Yes, I see that.

16 Q. The first point under that heading is, quote,  
17 advertising is the key means for moving cigarettes,  
18 closed quote; right?

19 A. Yes, that's -- that's what it says.

20 Q. Now sir, let me ask you, do you agree that  
21 advertising is the key means for moving cigarettes?

22 A. Do I personally believe?

23 Q. Yes, sir.

24 A. No, I think it may play a role, but I'm not sure  
25 of the context of this statement.

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1 Q. All right. Well you would agree that at least  
2 in your opinion advertising does play a role in the  
3 sale of cigarettes; right?

4 A. Advertising plays a role in terms of  
5 communicating to consumers, adult consumers, and I  
6 guess I can best speak to the way I view the role of  
7 advertising with Brown & Williamson.

8 Q. Well you would agree that Brown & Williamson has  
9 viewed advertising as one of the key means for  
10 selling cigarettes over the years, wouldn't you?

11 MR. RICHARDSON: Objection to the form of  
12 the question.

13 A. I would agree that advertising plays a role in  
14 the marketing mix.

15 Q. That's why Brown & Williamson does it, isn't  
16 that true?

17 A. Why we do --

18 Q. Advertise its cigarettes.

19 A. The role of the advertising is fairly simple  
20 with Brown & Williamson. We advertise to smokers to  
21 maintain brand loyalty and convince smokers of  
22 competitive brands to switch to B&W brands, all under  
23 the backdrop of adult smokers.

24 Q. Well sir, Brown & Williamson over the years has  
25 made certain claims in its advertising concerning its

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1 cigarettes; right?

2 A. I'm not sure what you mean by "claims" ma'am.

3 Q. Well sir, Brown & Williamson makes statements in  
4 its advertising; right?

5 A. Yes, that is correct.

6 Q. These statements are supposed to be true; right?

7 A. I would say so, yes.

8 Q. All right. It would be inappropriate for Brown  
9 & Williamson to make statements which were not true;  
10 right?

11 A. That is correct.

12 Q. It would be inappropriate for Brown & Williamson  
13 to make statements which were not backed up by the  
14 facts; right?

15 A. I would agree with that.

16 Q. Well sir, are you aware that in the '40s and  
17 '50s Brown & Williamson made health claims  
18 concerning its cigarettes?

19 MR. RICHARDSON: Objection to the form of  
20 the question.

21 A. I have reviewed some of the advertising from  
22 that period of time.

23 Q. And you know, based on your review, that Brown &  
24 Williamson did make health claims concerning its  
25 cigarettes; right?

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1 A. There were some -- some claims made during that  
2 period of time, yes.

3 (Plaintiffs' Exhibit 4418 marked for  
4 identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as  
7 Plaintiffs' Exhibit 4418, this is a -- an ad for  
8 Viceroy which is one of the brands that Brown &  
9 Williamson sells; right?

10 A. Yes, we sell Viceroy.

11 Q. For the record, Exhibit 4418 is Bates numbered  
12 682811357; right?

13 A. Yes.

14 Q. Now this is a Viceroy ad that Brown & Williamson  
15 ran in the '50s; true?

16 MR. RICHARDSON: Objection to the form of  
17 the question.

18 A. I can't say for certainty if this ad was ever  
19 run or the actual time frame.

20 Q. Well sir, at least according to the information  
21 on this ad, Brown & Williamson claimed that Viceroy  
22 cigarettes had double-barreled health protection;  
23 right?

24 A. That's -- That is exactly what the copy says.

25 Q. All right. Sir, did Brown & Williamson's

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1 Viceroy cigarette provide health protection to  
2 smokers?

3 A. Not an expert even to be able to comment on  
4 that. Again, I don't know if this ad in what I'm  
5 viewing right here was actually ever an ad, ma'am.

6 Q. All right. Well sir, have you reviewed the  
7 summaries of Brown & Williamson's advertising that  
8 have been put together by advertising personnel  
9 within Brown & Williamson in the past?

10 A. Excuse me, I'm not sure if I understand your  
11 question, ma'am.

12 Q. Well you understand that documents have been put  
13 together which summarized Brown & Williamson's  
14 advertising in the '40s, '50s and '60s by people such  
15 as Mr. Parrack; right?

16 A. That is correct.

17 Q. And you understand that those ads -- I'm sorry  
18 -- those --

19 You've reviewed those summaries; right?

20 A. The summaries of advertising that may have run  
21 at that period of time.

22 Q. Yes, sir.

23 A. Correct.

24 Q. And you understand that there are references in  
25 those summaries to ads for Viceroy cigarettes

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1 claiming double barreled health protection which  
2 actually ran.

3 MR. RICHARDSON: Objection to the form of  
4 the question.

5 Q. Right?

6 A. Again, I am -- I am not --

7 To review this -- this stat, I'm not sure if  
8 it's an ad, and whether I can -- I can't recall  
9 whether I've seen "double barreled" as a -- or the  
10 double barreled health protection as a copy line in  
11 anything that I can recall.

12 Q. Well sir, let me go back and ask you one more  
13 time.

14 Did Viceroy cigarettes provide smokers with  
15 health protection?

16 MR. RICHARDSON: Objection to the form of  
17 the question.

18 A. I don't -- Again I'm not an expert on the health  
19 side, ma'am.

20 Q. I know, but you are the person who is designated  
21 to speak on Brown & Williamson's behalf concerning  
22 advertising; right?

23 A. That is correct.

24 Q. All right. Let me ask you again. This  
25 particular ad says that "New KING-SIZE Viceroy," and

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1 then it says "DOUBLE-BARRELLED HEALTH PROTECTION AT  
2 LOW COST." Did Viceroy cigarettes offer smokers  
3 double-barreled health protection?

4 A. I don't know.

5 MR. RICHARDSON: Objection to the form of  
6 the question.

7 Q. Do you know if Brown & Williamson has one single  
8 piece of evidence that suggests that Viceroy  
9 cigarettes offered smokers health protection?

10 A. No, ma'am, I don't.

11 (Plaintiffs' Exhibit 4419 marked for  
12 identification.)

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as  
15 Plaintiffs' Exhibit 4419, this is an ad for Viceroy  
16 cigarettes; right?

17 A. I'm not sure if it is an ad.

18 Q. You just don't know one way or the other whether  
19 this actually ran; right?

20 A. That is correct.

21 Q. All right. But you have seen summaries put  
22 together by Mr. Parrack and other which indicate that  
23 this and Exhibit 4418 did run.

24 MR. RICHARDSON: Objection to the form of  
25 the question, misstates testimony.

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1 Q. Right?

2 A. Could you ask me the question again, ma'am?

3 Q. Certainly. You have seen summaries of Brown &  
4 Williamson advertising done by Mr. Parrack and others  
5 which relate the fact that Exhibit 4418 and Exhibit  
6 4419 were run as ads by Brown & Williamson; correct?

7 MR. RICHARDSON: Objection.

8 A. What I have done is I have reviewed advertising,  
9 I've reviewed some of the historical perspectives on  
10 advertising. Again, I do not know if what we're  
11 speaking of is an ad, it is a concept, I'm not sure  
12 of the context of the information that it's showing  
13 so I could just comment on what I'm seeing in front  
14 of me. Again, I don't know if it ever ran or not, I  
15 don't believe Mr. Parrack had, as we tie him into the  
16 context of this, I'm not sure his time frame of  
17 employment as well because I'm not even sure of the  
18 time that we're looking -- the time period that we're  
19 looking at these ads, ma'am.

20 Q. Sir, you have no information that Exhibits 4418  
21 and 4419 did not run as ads; right?

22 A. As I sit here today, no.

23 Q. By the way, for the record, Exhibit 4419 is  
24 plaintiffs -- or is Bates numbered 503145123; right?

25 A. That is correct.

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1 Q. And Exhibit 4419 says in the headline, "New  
2 HEALTH-GUARD Filter Makes VICEROY Better for Your  
3 Health Than Any Other Leading Cigarette"; correct?

4 A. That is what it states, yes.

5 Q. Did Brown & Williamson have any information that  
6 supported the claim that the filter on Viceroy  
7 cigarettes made it better for a smoker's health?

8 MR. RICHARDSON: Objection to the form of  
9 the question, lacks foundation.

10 A. I do not know the answer to that.

11 Q. Sir, if Brown & Williamson had no information  
12 that supported the claim that the filter on a Viceroy  
13 cigarette was better for your health or that Viceroy  
14 cigarettes had double barreled health protection, it  
15 would be inappropriate for Brown & Williamson to make  
16 statements in ads which it ran in the public; right?

17 MR. RICHARDSON: Same objection.

18 A. I'm not sure -- Could you please restate your  
19 question for me again, please?

20 Q. Certainly.

21 A. Thanks.

22 Q. If Brown & Williamson did not have information  
23 supporting the claim that the filter on the Viceroy  
24 cigarette was better for a smoker's health or that  
25 Viceroy cigarettes offered a smoker double barreled

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1 health protection, it would be inappropriate for  
2 Brown & Williamson to make statements to that effect  
3 in ads that it ran in the -- to the public; right?

4 MR. RICHARDSON: Same objection.

5 A. Again, my answer would only be speculation since  
6 I don't know if there was information available at  
7 the time when these ads may have run, which is -- so  
8 it would only be purely a guess on my part, ma'am.

9 Q. Well sir, you would agree that today it is  
10 inappropriate for Brown & Williamson to run ads which  
11 make claims that are not supported by scientific  
12 evidence; right?

13 A. As we sit today?

14 Q. Yes.

15 A. Absolutely.

16 Q. All right. And you would have no reason to  
17 believe that it was inappropriate back in the '40s  
18 and '50s to make or to run ads that made claims for  
19 which the company did not have any scientific  
20 evidence; right?

21 MR. RICHARDSON: Objection.

22 A. I would say the same -- same rules would apply.

23 Q. All right. And sir, let me ask you again, then,  
24 if the same rules apply and Brown & Williamson did  
25 not have information that demonstrated that the

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1 filter on Viceroy cigarettes was safer for a smoker's  
2 health or that Viceroy King size cigarettes offered  
3 double barreled health protection, it would have been  
4 inappropriate for them to run ads that so claimed;  
5 right?

6 MR. RICHARDSON: Objection to the form of  
7 the question.

8 A. Ma'am, I'm not sure of the information that  
9 would have been available, and I'm trying to be  
10 responsive to your question. Again, in the context  
11 of these pieces of -- that may be ads, I'm not sure  
12 if they are or not, that I am not sure of the context  
13 of what is being said and so I am trying to be  
14 responsive to your question. It's inappropriateness  
15 is just going to be a -- would be a guess since I  
16 don't know what the context of these -- if these are  
17 ads, I'm just trying to -- I am trying to be  
18 responsive to it.

19 Q. Well sir, as the person who Brown & Williamson  
20 has designated as its spokesperson to talk with us in  
21 this lawsuit about the subject of advertising, you  
22 would agree it would be inappropriate for Brown &  
23 Williamson to make health-related claims in any ad  
24 for which it did not have scientific evidence;  
25 right?

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1 MR. RICHARDSON: Objection to the form of  
2 the question.

3 A. I would say that a claim in the -- in  
4 advertising should have some basis of -- to be able  
5 to make that claim.

6 (Plaintiffs' Exhibit 4420 marked for  
7 identification.)

8 BY MS. WIVELL:

9 Q. Sir, showing you what's been marked as  
10 Plaintiffs' Exhibit 4420, this is another ad that  
11 Brown & Williamson ran, isn't it, sir?

12 A. As I stated, I'm not sure if this is an ad that  
13 was run, ma'am.

14 Q. You have no information that it wasn't run.

15 A. Or that it was, correct.

16 Q. Sir, for the record, Exhibit 4420 is Bates  
17 numbered 503145131; right?

18 A. That is correct.

19 Q. And this one's for Viceroy cigarettes and it's  
20 entitled "Filtered Cigarette Smoke Is Better for Your  
21 Health"; right?

22 A. That is what it states on this.

23 Q. And it shows a picture of someone who's dressed  
24 like a doctor; right?

25 MR. RICHARDSON: Objection to the form of

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1 the question.

2 A. I can't tell from this picture.

3 Q. Well isn't that supposed to inform that doctors  
4 recommend Viceroy cigarettes, sir?

5 MR. RICHARDSON: Same objection.

6 A. I don't -- I don't read that into it. Again, it  
7 would just -- it is a very, very bad copy and I'm  
8 just -- it would only be a guess.

9 Q. Well sir, isn't it true that Brown & Williamson  
10 ran ads for Viceroy cigarettes which showed and also  
11 said that doctors recommended Viceroy's?

12 A. They may have, I'm not aware.

13 Q. Well sir, did you in preparation for your  
14 deposition go back and look at ads which Brown &  
15 Williamson had run that it admits it ran for its  
16 cigarettes in the '40s and '50s?

17 A. As I stated, yes, I've reviewed historical ads.

18 Q. Did you review this ad, sir?

19 A. I may have. I don't recall as we sit here. I  
20 reviewed a number of ads.

21 Q. Well sir, did Brown & Williamson have evidence  
22 that filtered cigarette smoke was better for a  
23 smoker's health than unfiltered smoke?

24 A. I do not know.

25 Q. Sir, you are aware that Brown & Williamson ran

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1 an ad that claimed that dentists advised that people  
2 smoke Viceroys; right?

3 A. I may be -- I may have seen something in  
4 preparation for today.

5 (Plaintiffs' Exhibit 4421 marked for  
6 identification.)

7 BY MS. WIVELL:

8 Q. Sir, showing you what's been marked as  
9 Plaintiffs' Exhibit 4421, this is a document that  
10 begins with the Bates number 682811349; right?

11 A. That is correct.

12 Q. And Exhibit 4421 is an ad that Brown &  
13 Williamson ran entitled "19,293 DENTISTS ADVISE Smoke  
14 VICEROYS"; right?

15 A. In the context of what it states, whether it was  
16 an ad, yes.

17 Q. Well sir, this was an ad that was run by Brown &  
18 Williamson, wasn't it?

19 A. Again, it may have been run.

20 Q. Well you have no information that it wasn't  
21 run.

22 A. That is correct.

23 Q. All right. Now sir, did Brown & Williamson do a  
24 survey of dentists to see whether dentists  
25 recommended Viceroys over other cigarettes?

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1 A. I do not know if --

2 Q. You have no information that demonstrates that  
3 Brown & Williamson had anyone run a survey of  
4 dentists to see whether dentists recommended Brown &  
5 Williamson's Viceroy cigarettes, do you, sir?

6 A. I do not know if they did or didn't.

7 Q. Well in preparation for your deposition, knowing  
8 you were going to come here and talk about  
9 advertising, you didn't see one bit of evidence that  
10 suggested that Brown & Williamson had inquired as --  
11 as to whether dentists advised that -- that smokers  
12 smoke Viceroy's; right?

13 A. In preparation for today, I did not see any  
14 information that we did or didn't contact these  
15 dentists, ma'am.

16 Q. So as you sit here today, you don't know whether  
17 Brown & Williamson had one bit of evidence that  
18 supported the claims that dentists advised that  
19 smokers smoke Viceroy's; right?

20 A. I do not know whether they did or didn't, so as  
21 I sit here today, I do not know whether they  
22 contacted them or not.

23 Q. Well sir, you are aware that Brown & Williamson  
24 ran ads over the years claiming that -- that dentists  
25 smoked Viceroy's; right?

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1 A. That dentists smoked Viceroy's?

2 Q. That dentists advised smoking Viceroy's.

3 A. In the context of this piece that you've given  
4 me here, and if this was an ad, which I don't know if  
5 it was, that is what it states.

6 Q. Sir, did you see a chronological account of  
7 Viceroy advertising that was prepared by members of  
8 Brown & Williamson's marketing department in  
9 preparation for your deposition today?

10 A. Again, I reviewed a number of them. I may have  
11 seen something on a historical Viceroy, but again I  
12 reviewed a number of documents.

13 (Plaintiffs' Exhibit 4422 marked for  
14 identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as  
17 Plaintiffs' Exhibit 4422, this is a memo from E. A.  
18 Willets to G. T. Reid with a copy to Carter Broach;  
19 right?

20 A. Yes.

21 Q. What was Mr. Willets' position back in 1976 when  
22 he wrote this document?

23 A. He held a position within the marketing  
24 department I believe.

25 Q. All right. And Carter Broach was the brand

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1 manager for Viceroy cigarettes, wasn't he?

2 A. I'm not exactly sure.

3 Q. By the way, a brand manager is the person who is  
4 responsible for the marketing, advertising and  
5 promotion of a particular brand within Brown &  
6 Williamson.

7 A. That may be part of what they were responsible  
8 for, I don't know if they had total responsibility,  
9 but that's a close summary of some of their  
10 responsibilities.

11 Q. All right. This Exhibit 4422 begins with the  
12 Bates number 464306780; right?

13 A. Yes.

14 Q. And according to the first paragraph, it  
15 presents a chronological account of Viceroy  
16 advertising objectives and creative strategies and a  
17 brief evaluation of each of them; right?

18 A. Yes.

19 Q. And the subject of the memo is "VICEROY  
20 Advertising Objectives and Creative Strategies," from  
21 1936 to 1975; right?

22 A. Yes, that is the subject.

23 Q. All right. And sir, you've reviewed this  
24 document, haven't you?

25 A. Yes, I may have reviewed it.

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1 Q. And you know that among the objectives and  
2 creative strategies that are articulated over and  
3 over again in this document for Viceroy advertising  
4 is the health claim or the claim of health benefits;  
5 right?

6 MR. RICHARDSON: Objection to the form of  
7 the question.

8 A. I'm not sure of the full objectives. If you  
9 would like, I would read it and can comment on the  
10 full objective, I mean the full document.

11 Q. Well let's take a look at the first page. There  
12 you see a heading "OBJECTIVE AND CREATIVE STRATEGY";  
13 right?

14 A. Yes.

15 Q. It says, "Attract smokers of competitive  
16 non-filter brands by promising mild, clean smoke and  
17 health benefits because of filter"; right?

18 A. That is what it states.

19 Q. All right. And then if we turn to the second  
20 page, do you see the heading 1946 to 1949?

21 A. Yes.

22 Q. All right. And there the campaign is described  
23 as "Dentists recommend VICEROY"; right?

24 A. That is what the document states.

25 Q. So at least according to this document the

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1 dentists-recommending-Viceroy campaign was used to --  
2 by Brown & Williamson to promote Viceroy cigarettes;  
3 right?

4 MR. RICHARDSON: Objection to the form of  
5 the question.

6 A. Based on this document, the campaign that was  
7 termed "dentists recommend Viceroy" appears that it  
8 may have run in '46 to '49.

9 Q. All right. And the objectives and creative  
10 strategy for that, according to this document, were  
11 to attract smokers of competitive, nonfilter brands  
12 by promising cosmetic benefits supported by  
13 professional recommendations because of Viceroy's  
14 filter; right?

15 A. That is -- That is what it states.

16 Q. All right. And it goes on to note that sales  
17 nearly doubled as a result of this campaign, doesn't  
18 it?

19 A. It does not state that as a result of the  
20 campaign sales doubled.

21 Q. Well it says, under "EVALUATION," "Sales nearly  
22 doubled from 400 million units in 1946 to 700 million  
23 units in 1949"; right?

24 A. It does state that.

25 Q. All right. And it goes on to say, "Media

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1 expenditure of only...200,000 in 1949. Brand  
2 positioning shifted slightly from healthier cigarette  
3 to cleaner cigarette with cosmetic benefits"; right?

4 A. It does state that, but it does not, in the  
5 evaluation, state anything as a result of the  
6 advertising or the campaign, if the growth is  
7 attributed to the advertising.

8 Q. Now sir, Brown & Williamson eventually went on  
9 to be part of or to voluntarily agree to comply with  
10 an advertising code for cigarettes; right?

11 A. That is correct.

12 Q. And the advertising code for cigarettes was  
13 voluntarily adopted by the tobacco industry in 1964;  
14 right?

15 A. I didn't know there was a question there. Yes.

16 Q. All right. And when the cigarette manufacturers  
17 voluntarily adopted the code, they all agreed to be  
18 bound by it; right?

19 A. That is correct.

20 Q. And Brown & Williamson said it would abide by  
21 the voluntary standards set up in the cigarette  
22 code.

23 A. That is correct.

24 (Plaintiffs' Exhibit 4423 marked for  
25 identification.)

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as  
3 Plaintiffs' Exhibit 4423, this is a document that  
4 begins with the Bates number 690000049; right?

5 A. Yes, that is correct.

6 Q. And beginning on the second page of Exhibit 4423  
7 is the Cigarette Advertising Code that Brown &  
8 Williamson voluntarily agreed to be bound by in  
9 1964.

10 MR. RICHARDSON: Objection to the form of  
11 the question.

12 A. I am -- This is a statement of the Cigarette  
13 Advertising Code. I am not sure of the date that --  
14 that this version reflects, but it is a statement of  
15 the Cigarette Advertising Code at some time.

16 Q. All right. Well you understood that Robert  
17 Meyner was installed as the administrator of the  
18 Cigarette Advertising Code in the early '60s; right?

19 A. I'm not exactly sure, ma'am.

20 Q. Well sir, you understood that this Cigarette  
21 Advertising Code, Exhibit 4423, provided standards  
22 that Brown & Williamson agreed to be bound by  
23 concerning its advertising; right?

24 A. That is correct.

25 Q. Now among the things that Brown & Williamson

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1 agreed not to do was -- Let's see if I can find it --  
2 at page 5, not to make representations with regard to  
3 health claims unless there was essentially scientific  
4 data to back up those claims. Isn't that right?

5 A. What point? Yes.

6 Q. "SECTION 2."

7 A. Yes, I see it there.

8 Q. All right. And you would agree that this code,  
9 when it was adopted, required Brown & Williamson to  
10 have data to back up the claims it made in its  
11 advertising; right?

12 MR. RICHARDSON: Objection to the form of  
13 the question.

14 A. Yes, if we take the -- as simply what it states,  
15 "No cigarette advertising which makes a  
16 representation with respect to health shall be used,"  
17 and then there is some provisions here.

18 Q. Okay. Now sir, Brown & Williamson stopped using  
19 the ads that claimed that filtered cigarette smoke  
20 was better for its health and that Viceroy's were  
21 double barreled -- or offered double-barreled health  
22 protection after the cigarette code was adopted;  
23 right?

24 A. They may have even stopped before that. Again,  
25 the -- the ads we reviewed are, based on the dates

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1 are probably clearly before the voluntary code, so  
2 I'm not sure what -- what lead them on to stopping.  
3 Q. Okay. But Brown & Williamson did not make the  
4 kind of claims that we have seen in Exhibits 4419,  
5 4420, 4421 after the Cigarette Advertising Code was  
6 adopted; right?

7 MR. RICHARDSON: Objection to the form of  
8 the question.

9 A. What types of claims, ma'am? "Dentists  
10 recommend?" I'm not sure what --

11 Q. Yes, and the double-barreled health claims and  
12 that filtered cigarette smoke was better for a  
13 smoker's health. Those kinds of claims. It did not  
14 make those explicit claims after the adoption of the  
15 Cigarette Advertising Code, did it?

16 A. I don't believe we did. No, ma'am.

17 Q. Okay.

18 A. I don't believe we did.

19 Q. All right. Now instead, Brown & Williamson  
20 began focusing its advertising on the concern that  
21 smokers had expressed with regard to health claims.  
22 I'm sorry, strike that.

23 Instead, Brown & Williamson began to advertise  
24 low-tar, low-nicotine cigarettes, implying they were  
25 healthier; right?

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1 MR. RICHARDSON: Objection to the form of  
2 the question.

3 A. I'm not -- When you -- When you state  
4 "healthier," on -- again on the health claims, the  
5 advertising and growth of low-tar products was a  
6 result of consumer preferences.

7 Q. And you would agree that consumers thought that  
8 low-tar, low-nicotine cigarettes were healthier;  
9 right?

10 A. No, I have no basis to make that statement.

11 (Plaintiffs' Exhibit 4424 marked for  
12 identification.)

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as  
15 Plaintiffs' Exhibit 4424, this is a document that  
16 begins with Bates number 660067922; right?

17 A. Yes, it does.

18 Q. And it concerns FACT cigarettes, doesn't it?

19 A. The concept description, yes.

20 Q. All right. Now Exhibit 4424 is a concept  
21 description and potential marketing plan. What is a  
22 concept description?

23 A. Well, I think it's -- it describes an idea that  
24 may have been at a discussion point that exists at  
25 some level in the marketing department. Again,

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1 without reviewing the full context of the document,  
2 that I would, just on the concept description and  
3 potential marketing plan, this is discussions but it  
4 is not a reflection of what may actually have taken  
5 place, what was actually recommended, what actually  
6 took place in the marketplace.

7 Q. All right. Would you agree that a concept  
8 description is a think piece where the author sits  
9 down and articulates concepts for a potential  
10 extension of a brand or a line that the company has?

11 MR. RICHARDSON: Objection to the form of  
12 the question.

13 A. Again I'm not sure what the author would be  
14 thinking when they did this, but again a concept  
15 description is pretty much what I had stated. It --  
16 It could be a recommendation, it could be a  
17 suggestion, but -- at any level in the company, but I  
18 have no -- no idea whether or not what is within this  
19 document took place or was -- how far it went.

20 Q. All right. Well did Brown & Williamson actually  
21 market FACT cigarettes?

22 A. I believe we test marketed the brand, yes.

23 Q. Just so we're clear here, FACT was a brand name  
24 for a kind of cigarette which Brown & Williamson went  
25 so far as to test market; right?

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1 A. That is correct.

2 Q. Now would you turn to the page that ends with  
3 Bates number 925. Do you see there the heading  
4 "selective filtration as a smoking-and-health  
5 issue"?

6 A. Yes.

7 Q. It says there, "The smoking and health issue  
8 continues to be of increasing concern to smokers. At  
9 present, the 'healthful' aspects of cigarettes are  
10 considered as being synonymous with lowered  
11 tar/nicotine"; right?

12 A. That's what it states.

13 Q. Now sir, isn't it true that within Brown &  
14 Williamson it was thought that consumers equated  
15 low-tar, low-nicotine with more healthful cigarettes?

16 A. I'm not -- I'm not sure of the fact of that.  
17 Again, I'm just looking at the statement we just read  
18 and I think it goes on, "...recent trends indicate  
19 that other issues may also be of major public  
20 concern." So I'm not sure of what the -- this small  
21 sentence in here is within the full context of this  
22 document.

23 Q. Well sir, isn't it true that FACT cigarettes  
24 were marketed with the implication that they were  
25 healthier cigarettes?

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1 MR. RICHARDSON: Objection to the form of  
2 the question.

3 A. Again I'm not sure of the health claims that  
4 would be en -- that would be resident within the FACT  
5 proposition.

6 Q. Well sir, you know that Brown & Williamson, when  
7 it test marketed cigarettes, test marketed as -- or  
8 to smokers who were concerned about smoking; right?

9 A. I'm not -- As far as "concerned about smoking,"  
10 I'm not sure if that is correct.

11 (Plaintiffs' Exhibit 4425 marked for  
12 identification.)

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as  
15 Plaintiffs' Exhibit 4425, this is an ad that Brown &  
16 Williamson put together for FACT cigarettes; right?

17 A. As far as I know it could be an ad, yes.

18 Q. Well sir, this is an ad that Brown & Williamson  
19 ran for FACT cigarettes when it test marketed them.

20 A. I don't know --

21 Q. Isn't that true?

22 A. I don't know that for sure.

23 Q. Well sir --

24 A. It is a layout of an ad that may have run, but  
25 as to the extent that this ad actually run, or ran, I

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1 am not sure.

2 Q. Well who would you --

3 Where would you go to find out the answer to  
4 that question?

5 MR. RICHARDSON: Objection to the form of  
6 the question.

7 A. Again, what I am looking at is a photostat of a  
8 ad that may have run or it may not have run. Again  
9 I'm -- I'm being responsive to your question, but in  
10 terms of an ad, we have a mock-up here.

11 Q. Well sir, where would you go to find out whether  
12 this ad actually ran?

13 A. Probably the best place would be a review of the  
14 archives, which I have reviewed, and again I have --  
15 without exact precision to say this particular ad  
16 ran, I can't tell you that right now.

17 Q. All right. Well sir, you understand that you're  
18 here as Brown & Williamson's spokesperson to talk  
19 about advertising; right?

20 A. That is correct.

21 Q. All right. If you made a phone call back to  
22 Brown & Williamson and asked someone to check on  
23 whether these ads actually ran, would you be able to  
24 do that, to find out whether the ads that we've  
25 looked at today actually ran?

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1 A. With some time I may.

2 Q. All right. Well I'd like to take a break and  
3 have you find out whether the ads that we have looked  
4 at today, Exhibits 4419, 4421, 4420, 4418 and 4425  
5 actually ran.

6 MR. FRIBLEY: For the record, Plaintiffs  
7 have served, I think now, five batches of 750 ads  
8 apiece on the codefendants asking that specific  
9 question and that discovery is underway, so I'm not  
10 sure this is the most productive way to deal with  
11 it.

12 MS. WIVELL: Well I would like to go off  
13 the record and have the witness, who is supposedly  
14 here to testify about these subjects, find out those  
15 -- the answers to that question.

16 I have a right to a witness with knowledge, it  
17 be -- it has become apparent during the course of  
18 this deposition that this witness does not have  
19 sufficient knowledge with regard to the topic which  
20 was designated, and either we would like to have  
21 someone provide the information or I'd like a witness  
22 right now who can answer that question.

23 MR. RICHARDSON: I disagree with the  
24 representation that's made by counsel with respect to  
25 this witness' knowledge. He is the corporate

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1 designee, he's answering the questions as best he or  
2 anyone at the corporation can, and at this time to  
3 request this witness to make a phone call that may or  
4 may not lead to the kind of answers counsel is  
5 obviously seeking is somewhat preposterous in the  
6 context of this deposition which is scheduled for  
7 three hours, as I understand it.

8 MS. WIVELL: Well, the law is that -- and I  
9 can give you a cite to this, counsel -- that if  
10 during the course of a deposition it becomes apparent  
11 that the designated witness does not have sufficient  
12 information or knowledge with regard to the noticed  
13 topic, I have the right to request a witness and that  
14 either you have to provide one or get me the  
15 information. And I can give you the cite to that if  
16 you would like.

17 I'm going to hand you some additional ads that I  
18 intend to mark and ask whether these ads actually  
19 ran. We can go off the record, because I think I'm  
20 entitled to questions and not evasive answers from  
21 Brown & Williamson.

22 So I'm going to give you these, in fact I can  
23 have the court reporter mark them all right now, and  
24 then I would like the witness to be able to tell me  
25 whether these ads ran. I don't think it's

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1 appropriate that I have a witness sit -- I have Brown  
2 & Williamson sitting here saying we don't know one  
3 way or the other when the witness has just told me  
4 that through a check of the archives he can find out  
5 whether the ads actually ran. So I'm going to have  
6 the court reporter mark them and then we can have the  
7 witness go off the record, we can take the break, the  
8 witness can make the call and we can get answers to  
9 the questions.

10 MR. RICHARDSON: Again, counsel's  
11 representations are incorrect, and the premise upon  
12 which counsel has made her speech is equally  
13 incorrect. This witness is testifying to the best of  
14 his ability and knowledge as a corporate designee of  
15 Brown & Williamson. I think the record will reflect  
16 that.

17 (Plaintiffs' Exhibits 4426 - 4434 marked  
18 for identification.)

19 MS. WIVELL: All right. At this time --

20 MR. RICHARDSON: Counsel, --

21 MS. WIVELL: Excuse me.

22 MR. RICHARDSON: -- can I make a --

23 MS. WIVELL: I would like you not to  
24 interrupt me if you don't mind. We have a rule about  
25 that here in Minnesota.

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1           At this time I'm going to hand defense counsel  
2 Exhibits 4426 through 4434, and I'm going to take a  
3 break, I ask that the witness call Brown &  
4 Williamson, have someone start checking on these ads  
5 and the other ads that are in the archives, then once  
6 he's done that and asked them to start checking, then  
7 we can go back on the record and we'll take a break  
8 toward the end of the deposition so that he can get  
9 the answer to this question -- these questions.

10           And the questions are whether these and any of  
11 the other ads that I have marked as part of this  
12 deposition ever ran. I'd like to go off the record.

13           THE REPORTER: Off the record, please.

14           (Recess taken from 9:34 to 10:18 a.m.)

15           (Plaintiffs' Exhibits 4435 - 4440 marked  
16 for identification.)

17           MS. WIVELL: For the record, I would like  
18 to identify Exhibits 4426 through 4440 before we put  
19 the discussion that we've had off the record, on the  
20 record.

21           4426 is Bates number 784000788. Exhibit 4427 is  
22 Bates number 660028916. Exhibit 4428 is exhibit  
23 670180539. Exhibit 4429 is Bates number 670175583.  
24 Exhibit 4430 is exhibit 670175584. Exhibit 4431 is  
25 Bates number 503145188. Exhibit 4432 is Bates number

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1 682811371. Exhibit 4433 is Bates number 503145110.  
2 Exhibit 4434 is Bates number 682811334. Exhibit 4435  
3 has the Bates number cut off on the left side but is  
4 entitled "Introducing BARCLAY, the new cigarette that  
5 delivers more taste satisfaction than any other low  
6 'tar' cigarette because it is blended with 100% leaf  
7 tobaccos," and I can't read the Bates number.

8 THE REPORTER: I believe it is on the  
9 original.

10 MS. WIVELL: Sir, can you read the Bates  
11 number on the original?

12 THE WITNESS: 660107794.

13 MS. WIVELL: Thank you.

14 Exhibit 4436 is Bates number 660104275. Exhibit  
15 4437 is Bates number 670200721. Exhibit 4438 is  
16 Bates number 538009408. Exhibit 4439 is Bates number  
17 670248371. Exhibit 4440 is Bates number 670106261.

18 BY MS. WIVELL:

19 Q. Have you followed along with me, sir?

20 A. Yes, I have.

21 Q. And did I read that correctly?

22 A. You did.

23 Q. Thank you.

24 MS. WIVELL: All right. For the record,  
25 before we proceed with the questioning, I had asked



1 counsel about or, I'm sorry, I had asked the witness  
2 whether certain exhibits that we have listed Exhibits  
3 4425 and now through 4440, plus Exhibits 4418, 4419,  
4 4420 and 4421 had in fact been issued and run by  
5 Brown & Williamson, and I'd asked him to try and  
6 obtain that information during the break.

7 Mr. Fribley has made a proposal that I'd like  
8 him to put on the record.

9 MR. FRIBLEY: Sure. For the record, you  
10 had asked the witness whether, if he made a phone  
11 call back to B&W and asked someone to check on  
12 whether a particular ad actually ran, if he would be  
13 able to find out whether the ads we looked at today  
14 actually ran, and his answer was "with some time I  
15 may." We did take a break and took a discrete stack  
16 of these advertisements with us and visited with the  
17 witness.

18 It's clear from the conversation that without  
19 the actual ad copy, that simply the notion that he  
20 could make a phone call and describe an ad by phone  
21 and simply get a definitive answer to the question in  
22 the time we have today is just not -- not workable.  
23 Mr. Stowe is in the best position himself to go to  
24 the archive with a hard copy and verify that an ad  
25 was -- was run.

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1           Our proposal is this. He has reviewed the ads  
2   that have been marked, for the most part he's  
3   indicated that they appear to be ads that were  
4   published, but without going to the archive he can't  
5   give a definitive answer for any individual ad.  
6   We're willing to proceed on the basis that these ads  
7   appear to be ads that were published, Mr. Stowe will  
8   take the designated Bates number ads copies to  
9   Louisville to himself go through the archive, and we  
10   will respond in writing as to these specific ads  
11   confirming that they ran or, in the case of a few,  
12   that if -- if the indication is they didn't, we'll  
13   specifically inform you of that fact as to that ad.  
14   And we think under the circumstances of the  
15   deposition and given the fact that we're at the  
16   present time responding to a like inquiry for several  
17   hundred ads which may or may not include the same  
18   ones, that that's a reasonable proposal to -- by  
19   which to proceed.

20           MS. WIVELL: All right. At this time,  
21   based on our conversation, I'm willing to agree to go  
22   forward with the deposition with the understanding  
23   that within one week I will have a written response  
24   as to whether the exhibits that have been marked 4418  
25   through 4421 and 4425 through 4440 actually were run

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1 by Brown & Williamson.

2 Do you agree to that, Mr. Fribley?

3 MR. FRIBLEY: Yes.

4 MS. WIVELL: All right. Can we take a  
5 brief break, please.

6 THE REPORTER: Off the record, please.

7 (Recess taken from 10:24 to 10:30 a.m.)

8 BY MS. WIVELL:

9 Q. Sir, while we were off the record you had the  
10 opportunity to review Exhibits 4418 through 4421 and  
11 Exhibits 4425 through 4440; right?

12 A. That is correct.

13 Q. And you looked at them trying to identify those  
14 that appeared to you had been published by Brown &  
15 Williamson; right?

16 A. Yes.

17 Q. Are there any among that series of ads which you  
18 believe, as you sit here today, were not published,  
19 that you're not sure of?

20 A. Clearly not -- That -- I have one document.

21 Q. All right. Which one is that, sir?

22 A. This would be Exhibit 4435.

23 Q. And are you not sure whether Exhibit 4435 was  
24 actually run?

25 A. Well to me it does not even look like an ad. I

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1 just wanted to state the -- there are certain things  
2 that I would look for in an ad, such as even a prop  
3 clause that it was by Brown & Williamson, that is not  
4 found. So this is why I think that what we've agreed  
5 to do is the right course, to be sure of that.

6 What I can say is that of the majority of these  
7 they appear to be concepts or ads that have been  
8 brought to an artwork stage, but in response to the  
9 question did these ads actually run in publications,  
10 that is the piece why I have to go back and review.

11 Q. But to the best of your knowledge as you sit  
12 here, with the exception of Exhibit 4435, you believe  
13 that these appear to be ads that were published by  
14 Brown & Williamson?

15 A. To the extent of the question, yes, unless I can  
16 find that they had not been.

17 Q. All right.

18 A. Which I will let you know.

19 Q. And that also includes the exhibits we looked at  
20 earlier, Exhibits 4418, 4419, 4420 and 4421?

21 A. Yes.

22 Q. All right. Now sir, turning to -- back to  
23 Exhibit 4425, the advertisement concerning FACT.  
24 That implies that if someone is concerned about  
25 smoking issues, that FACT might be the cigarette for

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1 them; right?

2 MR. RICHARDSON: Objection to the form of  
3 the question.

4 A. Reading from this statement, if you -- "If  
5 you're concerned about smoking, you should know  
6 something about gas" is the copy line that we read.

7 Q. All right. And sir, isn't it true that FACT was  
8 aimed at people who were concerned about  
9 smoking-and-health issues related to cigarettes?

10 A. I'm just going to review the ad, if I may.  
11 What I gather from reading this ad is that FACT  
12 was a product that was marketed for consumers who may  
13 -- smoking consumers who may have been concerned  
14 about gas, but I'm not sure of the -- to the context  
15 of health on that.

16 Q. All right. Well sir, could you turn to Exhibit  
17 4434.

18 A. Yes.

19 Q. That is a Kool ad that talks about the other  
20 side of the smoking-and-health controversy; right?

21 A. That is what it looks like.

22 Q. All right. And to the best of your knowledge  
23 this was -- as you sit here today, this was an ad  
24 that was run by Brown & Williamson; right?

25 A. To the best of my knowledge without -- unless I

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1 can find out otherwise, yes, it looks like a  
2 corporate ad.

3 Q. And sir, wasn't this part of Brown &  
4 Williamson's attempt to show smokers that there was  
5 another side to the smoking-and-health controversy  
6 and that the case against smoking was not a closed  
7 case?

8 MR. RICHARDSON: Objection to the form of  
9 the question.

10 A. It would appear that this is a -- a article that  
11 would talk about a balanced view of the issues.

12 Q. And one of the reasons that Brown & Williamson  
13 wanted to run Exhibit 4434 was to let the smoker know  
14 that there was a controversy over whether cigarette  
15 smoking caused disease; right?

16 A. I'm not sure what they would have intended at  
17 the time, but yes, I would assume from -- from my  
18 perspective today that is what they wanted -- their  
19 intent of the ad was to show their -- that it was not  
20 a closed issue.

21 Q. All right, sir. Would it have been reasonable  
22 for a person reading Exhibit 4434 who was a smoker,  
23 to believe that there was a controversy over whether  
24 cigarette smoking caused disease?

25 MR. RICHARDSON: Objection to the form of

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1 the question, calls for speculation.

2 A. I think the intent of this was to communicate  
3 that there was other sides of the issue that need to  
4 be fully explored.

5 Q. And sir, it would be reasonable, wouldn't it,  
6 for a person who was a smoker to believe that the  
7 case against smoking was not a closed case if they  
8 had read Exhibit 4434; right?

9 MR. RICHARDSON: Objection to the form of  
10 the question, calls for speculation.

11 A. I'm not sure what the intent of it is, but as a  
12 consumer I would speculate if a consumer would read  
13 this that it would be it is not a closed case, there  
14 may be other issues that should be taken into  
15 account.

16 Q. Now this document, Exhibit 4434, refers to, in  
17 the second column on the left, a White paper. Do you  
18 see that, sir?

19 A. Yes, I do.

20 Q. And it says, "It is presented in the belief that  
21 full, free and informed discussion of" smoking -- I'm  
22 sorry -- "of the smoking and health controversy is  
23 essential to the public interest..."; right?

24 A. I'm not following along with you. My copy is  
25 very bad here. Where were you at?

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1 Q. All right. Well do you see where it says, "This  
2 information is an excerpt from White Paper No. 1"  
3 over on the left-hand side or, I'm sorry, over on the  
4 right-hand column?

5 A. On the right side, yes.

6 Q. And it goes on to say, "It is presented in the  
7 belief that full, free and informed discussion of the  
8 smoking and health controversy is essential to the  
9 public interest..."; right?

10 A. Yes, that's -- to that.

11 Q. Well sir, do you as Brown & Williamson's  
12 spokesperson here today believe that a full, free and  
13 informed discussion of the smoking-and-health issue  
14 is important for smokers?

15 A. Yes.

16 Q. All right. You would agree that it was  
17 important for smokers to have full information in  
18 order to make an informed choice about whether or not  
19 to smoke; right?

20 A. Yes.

21 Q. Now sir, could you turn to Exhibits 4437, 4439  
22 -- 38 and 4439.

23 A. 37, 38 and 39?

24 Q. Yes, sir. 4437 is a Belair ad that talks about  
25 Belair being America's #1 menthol under 10 milligrams

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1 of tar; right?

2 A. Yes, that is what it states.

3 Q. And 4438 is an ad for Kool Super Lights that  
4 says, "goes beyond low 'tar' to low 'gas'"; right?

5 A. That is correct.

6 Q. Now sir, Exhibit 4439 is an ad suggesting that  
7 smokers "Enjoy 'The Belair Experience'" which is  
8 "uniquely fresh," and mentions that it's a "low-tar  
9 menthol"; right?

10 A. Yes.

11 Q. Sir, do you -- do any of these ads mention  
12 smoker compensation?

13 A. I'm not sure what you mean by "smoker  
14 compensation," ma'am.

15 Q. Well sir, have you heard the phrase  
16 "compensation"?

17 A. I understand the term "compensation," but I'm  
18 not sure what you mean by "smoker compensation."

19 Q. Well do any of these ads tell smokers that if  
20 they compensate using these low-tar cigarettes,  
21 they're actually going to take in more tar than they  
22 would with a higher-tar cigarette?

23 MR. RICHARDSON: Objection to the form of  
24 the question.

25 A. What I read from it is that it is still in

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1 smoker terms, it is based on the taste of the product  
2 itself. I think we're dealing with taste of the  
3 product. And I believe I'm responsive to your  
4 question, aren't I?

5 Q. Well let me ask you this. Is the word  
6 "compensation" mentioned in any of these ads,  
7 Exhibits 4437, '38 and '39?

8 MR. RICHARDSON: Objection to the form of  
9 the question.

10 A. The word "compensation" is not listed.

11 Q. But in each one of these ads, you would agree,  
12 that there is highlighted the tar content of the  
13 particular cigarette; right?

14 MR. RICHARDSON: Objection to the form of  
15 the question.

16 A. In -- Yes, in two of the three the tar content  
17 is more prominent.

18 Q. All right. And -- Then in Exhibit 4439 it says  
19 "you won't believe it's a low 'tar' menthol"; right?

20 A. That is correct.

21 Q. And none of these ads give the smoker any  
22 indication that if they compensate in their smoking  
23 patterns they will actually be taking in more tar and  
24 nicotine than they would with a regular delivery  
25 cigarette; --

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1 MR. RICHARDSON: Object --

2 Q. -- do they, sir?

3 MR. RICHARDSON: Sorry. Objection to the  
4 form of the question.

5 A. No, they do not state that.

6 Q. And in fact if we look at Exhibit 4440, this is  
7 a Kool ad that talk -- for Kool Naturals that again  
8 talks about it being a lower tar cigarette than 75  
9 percent of all cigarettes sold; right?

10 A. Yes, that is what the copy states.

11 Q. And sir, this ad doesn't talk -- doesn't tell  
12 the smoker that if you smoke this cigarette, Kool  
13 Naturals, and you compensate as part of your  
14 subconscious smoking behavior that you're going to  
15 actually take in more tar than you would with a  
16 normal-delivery cigarette, does it?

17 MR. RICHARDSON: Objection to the form of  
18 the question.

19 A. I'm not sure how to comment on the subconscious  
20 smoking behavior, ma'am, but what I can read is that  
21 it is a -- it is -- apparently appears to be an  
22 advertisement regarding Kool Naturals that speaks to  
23 the consumer in consumer terms about the product  
24 delivery and the taste components of the product and  
25 the smoking experience itself, but I can't comment on

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1 their -- the subconscious behavior.

2 (Discussion off the stenographic record.)

3 Q. The tar figures that are stated in each of these  
4 ads, Exhibits 4437 through 4440, are smoking-machine  
5 tar deliveries, aren't they?

6 MR. RICHARDSON: Objection to the form of  
7 the question.

8 A. They -- From what I understand of the  
9 methodology, they are the numbers that are determined  
10 by the approved testing methodology of the FTC.

11 Q. All right. And these ads don't tell smokers  
12 that what an average smoker takes in is different  
13 than what a smoking machine takes in, does it?

14 A. No, they do not.

15 Q. Sir, you would agree that these ads that talk  
16 about low tar were Brown & Williamson's attempts to  
17 help its consumers rationalize their decision to  
18 smoke, wouldn't you?

19 MR. RICHARDSON: Objection to the form of  
20 the question.

21 A. No, I disagree with your statement.

22 Q. Well sir, Brown & Williamson knew that in order  
23 to provide smoker satisfaction in low-tar cigarettes  
24 it had to at the same time help consumers rationalize  
25 their decision to smoke. Isn't that true?

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1 A. No, I don't believe that is the case. The --  
2 Again, the prevalence and growth of low-tar products  
3 are purely all in -- well, are driven by consumer  
4 preference.

5 Q. Sir, showing you what's previously been marked  
6 as Plaintiffs' Exhibit 604 in this litigation, this  
7 is a "PROCEEDINGS OF THE SMOKING BEHAVIOR MARKETING  
8 CONFERENCE" that took place in Montreal, Quebec, July  
9 9th through the 12th, 1984; correct?

10 A. Yes, that's what it states on the exhibit.

11 Q. And for the record, Plaintiffs' Exhibit 604  
12 begins with Bates number 5360000000; right?

13 A. Yes.

14 Q. Now would you turn to the opening remarks that  
15 begin at the page that ends with Bates number 005.

16 A. Okay.

17 Q. All right. By the way, this was a conference  
18 that was attended by representatives of B.A.T. group  
19 tobacco companies from all over the world; right?

20 MR. KOMAR: Object to form.

21 A. Is there a -- Read me your question again,  
22 please.

23 Q. Yes. This was a conference that was attended by  
24 representatives of the B.A.T. group tobacco companies  
25 from all over the world; right?

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1 MR. RICHARDSON: Objection to the form of  
2 the question.

3 A. The attendees at this, from what it appears on  
4 this, that may have -- in fact specifically -- I'm  
5 really not sure if all of these were -- were members  
6 of the, as you referenced, the B.A.T. group.

7 Q. All right. Well the list of attendees is at  
8 page 004; right?

9 A. That's what I'm looking at.

10 Q. And it includes representatives from the U.K.;  
11 right?

12 A. Yes.

13 Q. And from Germany, Australia and Canada, in  
14 addition to the United States.

15 A. That is correct.

16 Q. Andy Mellman from the B&W marketing department  
17 attended; right?

18 A. He is shown on the list of delegates.

19 Q. All right. And also shown on the list of  
20 delegates is Tilford Riehl and Bill Deines from Brown  
21 & Williamson; right?

22 A. Yes.

23 Q. And at the time Tilford Riehl is indicated as  
24 being the division head for product development;  
25 right?

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1 A. Yes, that's what it shows.

2 Q. And if you turn to the next page, there are the  
3 opening remarks for this conference; right?

4 A. I would say yes, they are.

5 Q. All right. Well it says "OPENING REMARKS" at  
6 the top of the page; right?

7 A. Yes, it does.

8 Q. And if you direct your attention to the last  
9 sentence of the first paragraph of those opening  
10 remarks, it says, "The basic question that begs a  
11 response is how do we provide smoker satisfaction  
12 from a low tar base with specifically enhanced  
13 acceptability traits, and at the same time help our  
14 consumer rationalize his decision to smoke in light  
15 of increasing external pressures"; right?

16 A. That is what it states.

17 Q. Sir, and isn't it a fact that Brown & Williamson  
18 knew that it needed to develop and market low-tar  
19 cigarettes in order to try and help its consumer  
20 rationalize decisions to smoke in light of  
21 information that was being provided by public-health  
22 authorities to -- about the risks of smoking and  
23 health?

24 MR. RICHARDSON: Objection to the form of  
25 the question.

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1 A. No, I don't agree with that statement.

2 Q. Well you would agree, however, that this  
3 conference discussed methods of marketing and  
4 developing low-tar cigarettes which would help  
5 consumers to rationalize their internal needs  
6 concerning smoking and health.

7 MR. RICHARDSON: Objection to the form of  
8 the question.

9 A. What I would agree to is this is a collection of  
10 studies or information that may have been gathered.  
11 Even in the context of the opening remarks, ma'am,  
12 I'm not sure whose remarks those are or whose opinion  
13 that is being based on. But within this, this is a  
14 -- I would say a collection of information, but as I  
15 look at this, and also in the time frame we're  
16 looking at, I'm not aware of any of this becoming  
17 part of the -- the practice or what we've done with  
18 Brown & Williamson.

19 Q. Well sir, isn't it true that Brown & Williamson  
20 marketed a cigarette called Vanguard?

21 A. I'm aware of the trade name, but it may have  
22 been a test-market brand, ma'am.

23 Q. All right, sir and was -- isn't it true that  
24 Vanguard was developed in order to capitalize on  
25 smokers' desire to lessen health risks involved in

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1 smoking by switching to low-tar cigarettes?

2 A. I'm not sure of that, ma'am.

3 (Plaintiffs' Exhibit 4441 marked for  
4 identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as  
7 Plaintiffs' Exhibit 4441, this is a new project  
8 concept outline for Vanguard cigarette, isn't it?

9 A. That is -- Yes, that's what it states.

10 Q. For the record, Exhibit 4441 is Bates numbered  
11 670186789; right?

12 A. Yes.

13 Q. Would you turn to the second page, please, and  
14 read for the ladies and gentlemen of the jury what it  
15 says under "Marketing Strategy" there for Vanguard  
16 cigarette, high filtration, 84 millimeter?

17 A. What it says in that section is the marketing  
18 strategy, "To capitalize upon a prevalent smoker  
19 desire to lessen the health risk involved in his  
20 smoking via a switch to a low tar cigarette with  
21 satisfying taste."

22 Q. Now sir, Vanguard was before your time; right?

23 A. If in fact it was ever marketed, yes.

24 Q. All right. And sir, you have no information as  
25 you sit here today that would contradict the stated

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1 marketing strategy that's listed on the second page  
2 of Exhibit 4441 to material -- to capitalize on  
3 smokers' desire to lessen the health risks by  
4 developing a cigarette with low tar, do you?

5 MR. RICHARDSON: Objection to the form of  
6 the question.

7 A. I have no information to support or -- either  
8 way, since this document that we are looking at is a  
9 conceptual document, ma'am, I have no idea of the  
10 things that -- where this document said in its  
11 context. It looks like it's a preparation for a  
12 presentation, so in response to your question, as we  
13 sit here today, I have no knowledge that it went  
14 forth or didn't go forth.

15 Q. You have no knowledge at all that would  
16 contradict what's stated on the second page there, do  
17 you?

18 A. Or with -- Or knowledge to support it as well.

19 Q. Now sir, would you turn -- I'm sorry.

20 Did Brown & Williamson market LIFE cigarettes?

21 A. I believe LIFE was a -- a brand that was test  
22 marketed by Brown & Williamson.

23 Q. And sir, the marketing strategy for LIFE was to  
24 capitalize on health versus cigarette-smoking  
25 publicity by marketing LIFE as a low-tar cigarette;

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1 right?

2 MR. RICHARDSON: Objection to the form of  
3 the question.

4 A. As we sit here right now I'm not perfectly clear  
5 what the objective was of that brand.

6 Q. All right. Well let's take a look at page --  
7 the page of Exhibit 4441 that ends with Bates number  
8 789.

9 I'm sorry, I said that wrong, 798. There is a  
10 marketing strategy for a modified LIFE cigarette;  
11 right?

12 A. There is, yes, a marketing strategy concept.

13 Q. All right. And the marketing strategy concept  
14 was to, quote, "...fully capitalize on health vs.  
15 cigarette smoking publicity and" published --  
16 "publishing of tar/nicotine data by marketing LIFE  
17 as the lowest tar cigarette in the filter 85  
18 segment"; right?

19 A. Yes, that's what it states.

20 Q. And sir, you have no information that would  
21 contradict what's stated here as the marketing  
22 strategy for LIFE, would you?

23 A. No information today to support it or reject it.

24 Q. Sir, you would agree that -- Well, let me ask  
25 you this. Strike that.

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1           What are "hi-fi cigarettes"?

2   A.   Hi-fi cigarettes would be cigarettes defined by  
3   -- or classified as high-filtration cigarettes.

4   Q.   Can you give me an example of a hi-fi cigarette  
5   that was marketed by Brown & Williamson?

6   A.   Well, in terms of a high-filtration cigarette,  
7   Carlton.

8   Q.   Any others?

9   A.   Barclay.

10   Q.   Now sir, you would agree that Brown & Williamson  
11   marketed Carlton and Barclay as hi-fi cigarettes;  
12   right?

13   A.   As low-tar cigarettes, yes.

14   Q.   And one of the objects of Brown & Williamson's  
15   marketing of Carlton and Barclay was to capitalize on  
16   consumers' fears about smoking and health; right?

17   A.   No, that is not correct.

18   Q.   Well isn't it true that Brown & Williamson  
19   marketed these hi-fi cigarettes in an attempt to  
20   intercept quitters, people who wanted to quit but who  
21   by smoking these low-tar cigarettes might not quit  
22   and give up the cigarette habit?

23               MR. RICHARDSON:  Objection to the form of  
24   the question.

25   A.   I'm not sure of the strategy for either of those

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1 brands being that.

2 Q. All right. Well sir, let me show you what's  
3 previously been marked as Plaintiffs' Exhibit 948.  
4 Exhibit 948 is Bates numbered 777076768; right?

5 A. That's correct.

6 Q. And it's entitled "Purite filter"; right?

7 A. That is the -- the heading on this page, yes.

8 Q. What was the Purite filter?

9 A. I'm not sure exactly what the Purite filter was,  
10 ma'am.

11 Q. All right. Well in the first -- under the first  
12 heading it says, "MANAGEMENT SUMMARY" and then it  
13 says situational -- "Situation Analysis"; right?

14 A. Yes.

15 Q. And basically in a marketing document when  
16 someone analyzes the situation they set forth the  
17 position of the market or the potential market as one  
18 sees it; right?

19 MR. RICHARDSON: Objection to the form of  
20 the question.

21 A. I would say presuming this is a marketing  
22 document, but I can review it further if you'd like.

23 Q. All right. But you would agree that basically  
24 that's what a situation analysis is, is someone's  
25 analysis of the market as they perceive it; right?

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1 A. Yes, it can be.

2 Q. Now sir, it says here "The move to hi-fi  
3 cigarettes is in continuing, motivated by smokers who  
4 demonstrate personal concerns toward smoking in  
5 either the health, social areas or both"; right?

6 A. That is the portion of the first paragraph, yes.

7 Q. And it goes on to say, "To capitalize upon these  
8 perceived consumer needs, three successful  
9 positionings have emerged in hi-fi: health  
10 reassurance, taste reassurance, and social  
11 acceptability. All three positions utilize low 'tar'  
12 as a common thread"; right?

13 MR. RICHARDSON: Objection to the form of  
14 the question.

15 A. In the context as we have talked about,  
16 situational analysis, that is the author's point of  
17 view, yes.

18 Q. Well now, sir, isn't it true that within Brown &  
19 Williamson it was believed that if Brown & Williamson  
20 marketed either low tar or hi-fi cigarettes, it could  
21 try and reassure those smokers who were concerned  
22 about smoking-and-health issues?

23 A. No, ma'am. The marketing of the low-tar  
24 products was purely in response to consumer  
25 preference, changes in the marketplace and the

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1 growing demand by consumers for low-tar, low-delivery  
2 products.

3 Q. Well sir, isn't it true that Brown & Williamson  
4 really wanted to try and cut off quitters, to  
5 intercept them at the pass, so to speak, so that they  
6 wouldn't quit smoking?

7 MR. RICHARDSON: Objection to the form of  
8 the question.

9 A. In its marketing or advertising, is that the  
10 context of the question?

11 Q. Yes, sir.

12 A. No, ma'am.

13 Q. Well sir, could you turn to the second page of  
14 the document, Exhibit 948. There at point 3 it says,  
15 to stem the continuing decline in smoking  
16 incidence --

17 A. Excuse me, what Bates number? What page are you  
18 on?

19 Q. Second page, sir.

20 A. Oh.

21 Q. There it says, "To stem the" continuing "decline  
22 in smoking incidence, the industry must rapidly move  
23 to a point where it can address cigarettes in a  
24 totally positive light." Have I read that correctly  
25 so far?

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1 A. Yes, you have.

2 Q. Now the phrase "to stem the continued decline in  
3 smoking incidence," that means to -- to cut off  
4 people who have quit smoking; right?

5 MR. RICHARDSON: Objection to the form of  
6 the question. That is certainly one way to interpret  
7 it.

8 Q. Well "smoking incidence" means the number of  
9 people who are smoking; right?

10 A. Number of adult consumers smoking, yes.

11 Q. And "to stem the continuing decline" means to  
12 stop people from quitting smoking, doesn't it?

13 MR. RICHARDSON: Objection to the form of  
14 the question.

15 A. No, I don't believe that's what it states.

16 Q. Well do you know who authored this document,  
17 sir?

18 A. No, and as I said earlier, I'm not even sure if  
19 it is a marketing document or where it comes from in  
20 the context that as we had discussed, what a  
21 situational analysis is, I'm again not sure of the  
22 origin of the document.

23 Q. After it says, "To stem the continued decline in  
24 smoking incidence, the industry must rapidly move to  
25 a point where it can address cigarettes in a totally

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1 positive light." It goes on to say, "Low gas will  
2 help in terms of reducing personal concerns of active  
3 and passive smokers"; right?

4 A. Yes, that's the first part of that sentence.

5 Q. Now sir, isn't it true that Brown & Williamson  
6 developed marketing strategies to try and comfort the  
7 smoker by thinking that if they smoked a low-tar  
8 cigarette or a low-gas cigarette they were smoking a  
9 healthier cigarette?

10 A. No, I don't believe that's correct.

11 Q. Could you turn to the "Strategies" at the end of  
12 Exhibit 948 on the page that ends with Bates number  
13 790. There the page is headed "OBJECTIVES AND  
14 STRATEGIES"; right?

15 A. That is correct.

16 Q. And under the heading "Strategies," listed below  
17 there is an "a."; right? A subpoint "a."

18 A. Under "Strategies"?

19 Q. Yes.

20 A. Yes.

21 Q. And it says, "more complete health protection  
22 via lowered gas delivery"; right?

23 A. That's -- That is what it states.

24 Q. And there is a subpoint "b." that says

25 "increased smoker comfort via social acceptability

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1 as available through lowered gas delivery"; right?

2 A. As a strategy, yes.

3 Q. And sir, isn't it true that Brown & Williamson  
4 adopted those strategies for its hi-fi cigarettes and  
5 marketed them so that consumers might believe that  
6 they had health protection if they smoked low-gas or  
7 low-tar cigarettes?

8 A. No.

9 Q. Well sir, you would agree that one of Brown &  
10 Williamson's interests was trying to prevent people  
11 who stopped smoking; right?

12 A. "People who stopped smoking" is an interest to  
13 Brown & Williamson?

14 Q. Trying to prevent people from stopping smoking.

15 A. No, ma'am.

16 Q. Sir, showing you what's been marked as  
17 Plaintiffs' Exhibit 949, that is a document that  
18 bears the Bates number 650510607; right?

19 A. Yes.

20 Q. And it is from a Dr. E. F. Litzinger to Mr. E.  
21 T. Parrack; right?

22 A. Yes.

23 Q. Now at the time Exhibit 949 was written in  
24 January of 1978, what was Mr. Parrack's position at  
25 Brown & Williamson?

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1 A. I'm not sure of his exact position. He was in a  
2 -- a marketing -- I believe a marketing capacity.

3 Q. Sir, the first paragraph of Exhibit 949 starts,  
4 "We search for answers to the questions 'Why do  
5 people smoke?' and 'Why do people stop smoking?' to  
6 provide us with direction in developing new  
7 products"; correct?

8 A. That's what it states.

9 Could I read this document, please?

10 Q. Certainly. I'm only going to be asking you  
11 questions about the first paragraph.

12 A. I'd like to read the context if I could, please.

13 Q. Certainly.

14 A. Okay.

15 Q. You've read it, sir?

16 A. Yes.

17 Q. Now the last sentence of the first paragraph  
18 says, "Having answers to this latter question we  
19 might then design products to 'intercept' people who  
20 are trying to give up smoking"; right?

21 A. That is what the author wrote, yes.

22 Q. Sir, and you have -- I'm sorry.

23 You've never seen this document before, have  
24 you?

25 A. I may have seen it in preparation, but I wanted

1 to review it to respond to your questions.

2 Q. And sir, isn't it true that Brown & Williamson's  
3 efforts to market low-tar, low-gas cigarettes were  
4 designed to do exactly what the author says here in  
5 the last sentence, to intercept people who were  
6 trying to give up smoking?

7 A. No.

8 MR. RICHARDSON: Objection to the form of  
9 the question.

10 Q. Now sir, we talked a bit ago about the  
11 advertising code. Now I'd like to turn back to that  
12 subject.

13 Brown & Williamson had, before the adoption of  
14 the advertising code, used celebrities -- celebrity  
15 athletes to advertise their cigarettes; right?

16 A. Yes, I believe historically we had used  
17 athletes.

18 Q. All right. And if we look at Exhibits 4431,  
19 4432 and 4433, they are ads that Brown & Williamson  
20 ran for Viceroy cigarettes utilizing athlete  
21 spokespersons; right?

22 MR. RICHARDSON: '31, '32 and '33.

23 THE WITNESS: Okay.

24 A. To the degree that we've already talked about  
25 these being ads, yes, it reflects celeb -- athletes.

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1 Q. All right. As a matter of fact, Exhibit  
2 4443 [sic], 4442 [sic] and 4431 all include celebrity  
3 endorsements by Mickey Mantle; right?

4 A. Mickey Mantle is featured. I can't read what it  
5 says, in terms of an endorsement aspect.

6 Q. All right. But in addition to Mickey Mantle,  
7 Brown & Williamson also used Sam Snead and other  
8 professional athletes to sell their cigarettes;  
9 right?

10 A. That would be true, again, to the context that  
11 these were ads ran at that time, in, I do believe,  
12 the '50s.

13 Q. All right. Now after the adoption of the  
14 advertising code, the code prohibited celebrity  
15 endorsement or the use of celebrity athletes in ads,  
16 didn't it?

17 A. Yes, it did.

18 Q. All right. As -- So just so we're clear here,  
19 the ads that were 4431, 4432 and 4433 that utilized  
20 Mickey Mantle as a celebrity spokesperson, those were  
21 specifically prohibited by the ad code that was  
22 adopted in 1964; right?

23 A. Right. That's why I said these ads ran before  
24 the Cigarette Advertising Code, and after the  
25 adoption of the CAC, the cigarette code, these ads

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1 would not have been run or they would have been in  
2 violation of those types of codes.

3 Q. All right. Now you're familiar with the  
4 Cigarette Advertising Code, aren't you?

5 A. Yes, ma'am.

6 Q. And the Cigarette Advertising Code prohibits the  
7 use of any smoker -- I'm sorry, strike that.

8 The Cigarette Advertising Code prohibits the use  
9 of any person participating in physical activity  
10 requiring stamina or athletic conditioning beyond  
11 that of normal recreation; right?

12 A. Yes, that's part of the code.

13 Q. Now sir, would you turn your attention to  
14 Exhibits 4429 and 4430. Exhibit 4429 depicts a  
15 person involved in motocross or motorcycle racing;  
16 isn't that true?

17 A. It looks like somebody riding a motorcycle, yes.

18 Q. And 4430 depicts someone, an athlete who is  
19 involved in a ski race; right?

20 A. Yes, there's somebody -- somebody skiing.

21 Q. Now 4430 and 4429 were ads that Brown &  
22 Williamson ran after the adoption of the Cigarette  
23 Advertising Code; right?

24 A. To the extent of what we've agreed on the ads,  
25 yes, I would say that they appear to be ads run after

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1 the adoption of the code, ma'am.

2 Q. All right. Now sir, isn't it true that these  
3 ads, Exhibit 4429 and 4430, show people participating  
4 in physical activity requiring stamina -- stamina or  
5 athletic conditioning beyond that of normal  
6 recreation?

7 MR. RICHARDSON: Objection to the form of  
8 the question.

9 A. No, ma'am, I don't see that in the ads.

10 Q. You don't think a person engaged in a ski race,  
11 as is shown in 4430, is a person depicting physical  
12 activity beyond that of normal recreation?

13 A. I see --

14 MR. RICHARDSON: Objection to the form of  
15 the question.

16 A. I see a skier, I can't tell -- I don't know that  
17 it's a ski race or not.

18 Q. Well the skier's wearing a number on the front  
19 and going around a pole; right?

20 MR. RICHARDSON: Objection to the form of  
21 the question.

22 A. Ma'am, I see a skier on the ad.

23 Q. Well sir, if that skier were shown engaging in a  
24 ski race you would agree that that would be physical  
25 activity requiring stamina or athletic conditioning

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1 beyond normal recreation, wouldn't you?

2 MR. RICHARDSON: Objection to the form of  
3 the question, lacks foundation.

4 A. Excuse me.

5 Q. All right. Sir, if that skier were shown  
6 engaging in a ski race, would you agree that that  
7 would be a physical activity regarding -- requiring  
8 stamina or athletic conditioning beyond normal  
9 recreation?

10 MR. RICHARDSON: Objection to the form of  
11 the question.

12 A. It would just be my speculation, since I don't  
13 see it features a ski race, just a skier.

14 Q. Well sir, if Brown & Williamson showed an  
15 athlete engaged in physical activity requiring  
16 stamina or athletic conditioning beyond normal  
17 recreation, it would be a violation of the Cigarette  
18 Advertising Code, wouldn't it?

19 A. Presuming we did that, yes, ma'am.

20 Q. Now sir, could you turn -- I'm sorry. Strike  
21 that.

22 You would agree that the Cigarette Advertising  
23 Code prohibits the appearance of models in ads that  
24 -- who appear to be under the age of 25; right?

25 A. That is correct.

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1 Q. And as a matter of fact the cigarette code  
2 prohibits the advertising of cigarettes to people  
3 under the age of 21, doesn't it?

4 A. The ads are not -- Yes, the ads are designed for  
5 21 plus.

6 Q. All right. Sir, looking at Exhibit 4427, the ad  
7 with the single young lady dressed apparently in a  
8 cheerleader suit, outfit, sir, does that ad depict  
9 someone over the age of 25?

10 MR. RICHARDSON: Objection to the form of  
11 the question.

12 A. Well you're asking me to look at this ad  
13 photograph and say does she look older than 25 or  
14 younger?

15 Q. Yes.

16 A. Well I think when we're looking at an ad, if I  
17 believe the date at the top of it, '62, is clearly a  
18 date prior to the inception of the advertising code,  
19 and I would say no, she doesn't, and I -- ma'am, I  
20 can't tell if this is a cheerleader or not from this.

21 Q. All right. Well sir, you would agree that after  
22 the adoption of the Cigarette Advertising Code,  
23 Exhibit 4427 would have been prohibited; right?

24 MR. RICHARDSON: Objection to the form of  
25 the question.

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1 A. I'm not sure if this violates it as it sits.

2 Q. Well sir, she sure doesn't look 25 to you, does  
3 she?

4 MR. RICHARDSON: Same objection.

5 A. I guess it's a subjective opinion. No, she  
6 doesn't look under -- under 25 to me.

7 Q. She doesn't look --

8 A. No.

9 Q. The woman in Exhibit 4425 does not look under 25  
10 to you, is that what your testimony is?

11 A. You asked me what my opinion was, and that is my  
12 opinion.

13 Q. Now sir, you would agree that after the adoption  
14 of the cigarette code in 1964, the cigarette  
15 manufacturers were not supposed to stress that  
16 cigarette smoking is essential to social prominence  
17 or sexual attraction; right?

18 A. That is correct.

19 Q. All right. Would you agree that the code  
20 essentially tells cigarette manufacturers they're not  
21 supposed to use sex to sell cigarettes?

22 A. Yes, you could -- you could draw that analogy  
23 out of what is stated in the code, but I think the  
24 code is pretty clear itself on what is allowed and  
25 not allowed.

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1 Q. Okay. Well you have 4428, Exhibit 4428 in front  
2 of you. Doesn't Exhibit 4428 capitalize on the sex  
3 theme?

4 MR. RICHARDSON: Objection to the form of  
5 the question.

6 A. I'm not sure quite how to answer your question.  
7 It is -- It's only speculating. It would be an  
8 opinion on my part of what the ad is communicating.

9 Q. Well doesn't --

10 A. I don't see that in the ad.

11 Q. You don't see that ad communicating the sex  
12 theme, is that your testimony?

13 A. That's exactly my -- I don't see what you mean  
14 by "the sex" in this.

15 Q. All right. Well sir, would you turn to page --  
16 or the Exhibit 4426. Exhibit 4426 shows a young lady  
17 with a beach ball and advertises the Kool collection;  
18 right?

19 A. Yes.

20 Q. Now the Kool collection was 21 different premium  
21 items that a person could collect Kool coupons for  
22 and then send them in to get these particular items;  
23 right?

24 A. Yes, that's what it appear -- this appears to  
25 be.

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1 Q. All right. And among the 21 items that a person  
2 could save up their Kool coupons for was a bikini;  
3 right?

4 A. I don't know that.

5 Q. Okay. Well it shows a bikini with the word Kool  
6 all over it; right?

7 A. It does show that.

8 Q. It shows a beach ball with the words Kool all  
9 over it; right?

10 A. Yes, ma'am.

11 Q. It shows a beach bag with the words Kool all  
12 over it.

13 A. Yes, it does.

14 Q. But you are aware that there were items that  
15 Brown & Williamson sent out to smokers who collected  
16 these coupons that had the word Kool written all over  
17 them; right?

18 A. Again, I don't know if this was a program that  
19 ran, but I would say in the context of -- of that, it  
20 would appear to be these are a part of a collection,  
21 but I don't know if the individual items were  
22 actually part of the collection or not.

23 Q. By the way, does that young lady holding that  
24 beach ball appear to you to be over 25, sir?

25 MR. RICHARDSON: Objection to the form of

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1 the question.

2 A. Ma'am, I don't know how you could judge anything  
3 from what we're looking at on this. It would just be  
4 -- On my opinion, no, she does not.

5 Q. And sir, if she does not and this were an ad  
6 that was run after 1964, it would be a violation of  
7 the Cigarette Advertising Code, wouldn't it?

8 A. If in fact she looked under 25?

9 Q. Yes, sir.

10 A. Yes, ma'am, but I don't see how you could see  
11 that from any of this.

12 Q. Now sir, you would agree, wouldn't you, that  
13 there are two ways that a cigarette manufacturer can  
14 get people -- Strike that.

15 You would agree, sir, that there are two types  
16 of people that a cigarette manufacturer can draw its  
17 customers from, wouldn't you?

18 A. I'm not sure what the two types you're  
19 referencing are.

20 Q. Well sir, you're aware of a group called  
21 starters; right?

22 A. I'm aware of the definition, yes.

23 Q. All right. You're also aware of a group called  
24 switchers; right?

25 A. That is correct.

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1 Q. All right. Well let's start with switchers.

2 What are "switchers"?

3 A. Switchers are smokers, adult smokers of brands  
4 that will switch their brand of choice from one brand  
5 to another over -- in a given period of time. It is  
6 just a definition of a -- or a classification of  
7 smoking activity.

8 Q. Now sir, what are "starters"?

9 A. Starters would be smokers who have been smoking  
10 for a year or less or people who may have smoked at  
11 one time and have restarted smoking. All could be  
12 considered under the definition of starters.

13 Q. And you would agree, sir, that starters are  
14 sometimes referred to as "new smokers."

15 A. They may be. I'm not aware of that.

16 Q. Well would you agree that starters and switchers  
17 are important to Brown & Williamson as potential  
18 consumers?

19 A. I'd say switchers are very important to Brown &  
20 Williamson.

21 Q. Well isn't it true that starters are just as  
22 important to Brown & Williamson because -- Well, let  
23 me start with the first question.

24 Isn't it true that starters are just as  
25 important as switchers to Brown & Williamson?

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1 A. I'm not sure if I would say they are or not. It  
2 is not seen, from what I can speak to, as part of the  
3 objectives that we have really as a function of  
4 starting. We do -- We speak to smokers.

5 Q. Well sir, you would agree that in order --  
6 Brown & Williamson's purpose is to make money;  
7 right?

8 A. Yes, ma'am.

9 Q. All right. And it makes money by selling  
10 cigarettes.

11 A. That is our product, yes.

12 Q. And there are only a certain finite number of  
13 people that are willing to buy cigarettes to smoke  
14 them; right?

15 A. There is an -- a smoking population, yes.

16 Q. All right. And if a certain number of people  
17 quit every year, that population has to be maintained  
18 somehow in order that Brown & Williamson will keep  
19 its profits up; right?

20 A. Yes, ma'am.

21 Q. All right. Now sir, if a certain number of  
22 people quit, they've got to be replaced in that pool  
23 of smokers by either starters or quitters, right --

24 MR. RICHARDSON: Objection to --

25 Q. -- or switchers. Let me rephrase the question.

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1           If a certain number of people quit smoking every  
2 year, in order for Brown & Williamson to maintain its  
3 profits those smokers have to be replaced by either  
4 starters or switchers; right?

5           MR. RICHARDSON: Objection to the form of  
6 the question.

7 A.   In order to maintain your business there's  
8 really two objectives that you have; that is, number  
9 one is you maintain the current smokers of your  
10 product, the current adult smokers of your brand, and  
11 you attract smokers of competitive brands to your  
12 franchise. That is the two objectives and the two  
13 basis for our activities.

14 Q.   Well sir, you also can attract starters; isn't  
15 that true?

16 A.   Can I -- Are you saying do I attract starters?

17 Q.   Brown & Williamson attracts starters; right?

18 A.   There may be people that start with Brown &  
19 Williamson brands.

20 Q.   And one of Brown & Williamson's purposes is to  
21 try and attract starters.

22 A.   No, it's not.

23 Q.   You deny that, sir?

24 A.   I'm saying one of our objectives is to attract  
25 adult smokers either switching into the brand, again,

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1 or staying with the Brown & Williamson brands.

2 Q. And sir, you're -- just so the ladies and  
3 gentlemen of the jury understand it, it is your  
4 testimony as Brown & Williamson's spokesperson that  
5 Brown & Williamson does not try and attract starters;  
6 is that right?

7 A. Brown & Williamson does not target starters.

8 Q. Well sir, are you from Minnesota?

9 A. No, ma'am, I'm not.

10 Q. All right. You know we've got a lot of lakes  
11 around here; right?

12 A. I've heard of that, yes.

13 Q. Okay. And you understand that in order that --  
14 I'm sorry, strike that.

15 Do you understand that a lot of the lakes have  
16 rivers going out of them?

17 A. I'll take your -- I guess so.

18 Q. All right.

19 A. I'm not sure of the topography.

20 Q. All right. Well you would agree that if a lake  
21 is to stay a lake and there's water running out of  
22 it, it's got to replace that water somehow, doesn't  
23 it?

24 A. Somehow it should be replaced.

25 Q. And there's usually, you understand, a stream

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1 coming into the lake; right?

2 A. Yes.

3 Q. Now if you have water coming out, taking water

4 -- water going out of the lake taking it away,

5 you've got to have something to replace the water

6 that's leaving; right?

7 A. I'm following your example, yes.

8 Q. Okay. Now isn't it true that Brown & Williamson

9 looked at smokers in much the same way as our lake

10 analogy, that in order to replace those that were

11 either dying or quitting smoking, that Brown &

12 Williamson had to replace cigarette smokers with

13 either starters or switchers or both?

14 MR. RICHARDSON: Objection to the form of

15 the question.

16 A. If you could read me your question, I'm

17 somewhere in between your lake analogy and the

18 question and I just want to know what you want me to

19 respond to.

20 Q. Isn't it true that Brown & Williamson looked at

21 smokers much the same way as our lake analogy; in

22 order to replace those that were either dying or

23 quitting smoking, Brown & Williamson had to replace

24 cigarette smokers with either starters or switchers

25 or both?

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1 MR. RICHARDSON: Same objection.

2 A. Brown & Williamson studies smokers, okay, and we  
3 study smoking behavior, we study smoking dynamics,  
4 but in response to your question, what Brown &  
5 Williamson's advertising and promotion activities are  
6 designed is to maintain brand loyalty of existing  
7 smokers and attract adult smokers from competitive  
8 brands. We do study the entire dynamics of the  
9 marketplace, which is an important aspect of any  
10 business, to understand the dynamics that take place  
11 in a marketplace.

12 Q. Well sir, you would agree that developing new  
13 smokers is as important as developing switchers in  
14 the cigarette industry; right?

15 MR. RICHARDSON: Objection to the form of  
16 the question, asked and answered.

17 THE WITNESS: What was that?

18 Q. Let me rephrase the question if you have become  
19 confused.

20 A. I'm not.

21 Q. You would agree that developing new starters is  
22 as important as developer switchers in the industry  
23 cigarette industry.

24 MR. RICHARDSON: Same objection.

25 A. No, I would not.

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1 THE REPORTER: We have to go off the record  
2 and change tape.

3 (Recess taken from 11:25 to 11:41 a.m.)

4 BY MS. WIVELL:

5 Q. Sir, while we were off the record I handed you  
6 Exhibit 604; right?

7 A. Yes, ma'am.

8 Q. And I asked you to turn to the page that ends  
9 with Bates number 027.

10 A. Yes.

11 Q. And there is a heading entitled "STARTING";  
12 right?

13 A. Yes, there is.

14 Q. And it says, "Starting rates have declined";  
15 right?

16 A. That is what is stated.

17 Q. Now "starting rates" are the -- that's a  
18 reference to information that tobacco companies have  
19 about the number of people who have started to smoke  
20 cigarettes; right?

21 A. Or otherwise defined as the -- the rates at  
22 which we define starters has declined, yes.

23 Q. Okay. Goes on to say, "Mr. Knox pointed out  
24 that the failure to develop new smokers may have more  
25 detrimental impact on the industry in" the "future

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1 than losses due to quitting"; right?

2 A. That is what Mr. Knox is pointing out, yes.

3 Q. And just so we're clear, to remind the ladies  
4 and gentlemen of the jury, that statement was made in  
5 the proceedings of the smoking behavior marketing  
6 conference that was held in Quebec in July of 1984;  
7 right?

8 A. Yes, ma'am.

9 Q. That's the conference that Mr. Rhiel and Mr.  
10 Mellman are indicated as having attended on behalf of  
11 Brown & Williamson.

12 A. As shown as the list of delegates, yes.

13 Q. Now sir, you would agree that if the industry  
14 does not develop new smokers it may have a more  
15 detrimental impact on the cigarette industry than  
16 failure of a company to develop switchers; right?

17 A. No, I do not agree with that.

18 Q. Well sir, there's only a certain number of  
19 people who switch cigarette brands every year; right?

20 A. Yes, ma'am.

21 Q. It's a relatively small number; right?

22 MR. RICHARDSON: Objection to the form of  
23 the question.

24 A. "Relative," I mean there is -- switching  
25 incidence does occur within the smoking population.

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1 Q. But of the population of smokers who smoke, a  
2 relatively small percent of them switch from brand to  
3 brand each year; isn't that true?

4 MR. RICHARDSON: Same objection.

5 A. I'm sure -- I'm not sure of the context of what  
6 you mean by "small," but there is a group of  
7 consumers that do shift brands from -- from one brand  
8 to another.

9 Q. Well sir, there is a bigger group of potential  
10 consumers in those people under 21 who haven't  
11 started to smoke, isn't there?

12 MR. RICHARDSON: Objection to the form of  
13 the question.

14 A. Again I'm not sure, ma'am, how to answer your  
15 question. When we look at the smoking population, of  
16 which I can probably speak to the smoking population,  
17 there is a group of smoking adults who shift brands,  
18 there is also a group that stays with a brand, and  
19 those would be the areas that I could best comment  
20 on.

21 Q. Well sir, you would agree that if a person was  
22 still a nonsmoker at age 21, he or she would be  
23 unlikely to take up the cigarette habit; right?

24 MR. RICHARDSON: Objection to the form of  
25 the question.

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1 A. No, I don't agree with it in the context you've  
2 asked the question, ma'am.

3 Q. Well sir, let me show you a document from Brown  
4 & Williamson's files, Exhibit 755, and ask if you've  
5 ever seen that document before, sir.

6 A. I have -- I believe I recall this document in  
7 terms of preparing for today, ma'am.

8 Q. All right. This document, Exhibit 755, is Bates  
9 numbered 680096095 on its first page; right?

10 A. Yes.

11 Q. And it's a document that came out of Brown &  
12 Williamson's files.

13 A. I don't know that.

14 Q. All right. It says here that it's entitled  
15 "SECONDARY SOURCE DIGEST"; right?

16 A. Yes, that is the title.

17 Q. And if we read the first paragraph we see that  
18 this document is a compilation of information from  
19 several key articles and reports that were furnished  
20 by R&D on the subject of the psychological and the  
21 physiological aspects of smoking.

22 A. That is the first sentence of the document.

23 Q. And one of the documents that's referred to are  
24 the notes on the St. Martin Island conference by I.  
25 W. Hughes; right?

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1 A. Yes, that's what's stated in the second  
2 paragraph.

3 Q. Now I. W. Hughes is also known as Wally Hughes;  
4 right?

5 A. Yes, ma'am.

6 Q. And he originally was vice-president of research  
7 and development at Brown & Williamson and then went  
8 on to be president and CEO of the company; right?

9 A. I wasn't aware of his job history. I know of  
10 his last position as the president, yes, ma'am.

11 Q. All right. If you turn to the page that ends  
12 with Bates number 099, there is reference there to  
13 "RESEARCH RESULTS" on "Smoking by Children and  
14 Adults"; right?

15 A. Yes, that's what's stated.

16 Q. And at the last sentence of the second paragraph  
17 says, "...if a youngster were still a nonsmoker at  
18 twenty, he would be unlikely to take up the habit";  
19 right?

20 A. That -- That is what is stated in this document,  
21 but again, I'm not sure of even the author or where  
22 this came from. So that's the author's opinion I  
23 would suppose.

24 Q. All right. Well sir, do you have any  
25 information or statistics that you can direct the

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1 ladies and gentlemen of the jury to that would  
2 contradict the statement here that if a youngster  
3 were still a nonsmoker at 20, he or she would be  
4 unlikely to take up the habit?

5 MR. RICHARDSON: Objection to the form of  
6 the question.

7 A. In -- In terms of a specific document to direct  
8 your attention to, ma'am, I don't, but as part of  
9 preparing for today I did review documents that would  
10 also indicate -- and I'm sorry I can't point out the  
11 exact document -- that the smoking behavior and the  
12 incident of starting which we had talked about as  
13 somebody who is smoking now for a year or less, is a  
14 behavior that occurs throughout a smoker's life, and  
15 that you may find that 50 percent of the incidence of  
16 starting smoking occurs past the age of 21. But I  
17 don't have the specific document, but there's a  
18 number of references in preparing for this. So you  
19 see it's a behavior that occurs at a given time that  
20 may be a span of over a broad period of a smoker's  
21 life.

22 Q. Well sir, you would agree that if you saw  
23 information that said that 50 percent of the  
24 incidence of starting smoking occurs past the age of  
25 21, that would mean that 50 percent or one half of

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1 the starters begin before they're 21 years old;  
2 right?

3 MR. RICHARDSON: Objection to the form of  
4 the question.

5 A. In the context of my statement of starting  
6 occurring 50 percent after the age of 21, that would  
7 leave the other 50 percent below that, yes.

8 Q. All right.

9 A. But I was trying to respond to the context of --  
10 of the statement that you were asking me to read in  
11 this document as well.

12 Q. And sir, isn't it true that Brown & Williamson  
13 has known for the better part of 50 years that people  
14 tend to remain loyal to one brand over long periods  
15 of time?

16 A. The concept of brand loyalty is known within the  
17 organization, ma'am.

18 Q. And isn't it true that Brown & Williamson has  
19 known for the better part of 50 years that it is  
20 desirable to have a high penetration or a high  
21 incidence of smoking in young people in order to  
22 influence early their brand preference since they may  
23 stay with that brand for a long period of time?

24 MR. RICHARDSON: Objection to the form of  
25 the question.

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1 A. No, ma'am, I don't see that as a practice of the  
2 company.

3 (Plaintiffs' Exhibit 4442 marked for  
4 identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as  
7 Plaintiffs' Exhibit 4442, this is a document that you  
8 saw in preparation for your deposition today; right?

9 A. Let me just look at it to make sure it is,  
10 please.

11 Yes, ma'am.

12 Q. All right.

13 A. It appears to be something I reviewed in  
14 preparation.

15 Q. Exhibit 4442 begins with the Bates number  
16 650341294; right?

17 A. Correct.

18 Q. And one of the issues -- I'm sorry. Strike  
19 that.

20 This is a document that was sent to the then  
21 president of Brown & Williamson, Timothy Hartnett, in  
22 1948, by one of Brown & Williamson's market research  
23 companies; right?

24 MR. RICHARDSON: Objection to the form of  
25 the question.

- 1 A. Could I read this first page, ma'am?
- 2 Q. Certainly.
- 3 A. I've read the first page now.
- 4 Q. All right. You've read the document, sir,
- 5 haven't you, in addi -- in preparation for your
- 6 deposition?
- 7 A. Yes, I've reviewed this document.
- 8 Q. And just so we're clear here, the document and
- 9 the cover letter were sent to the then president of
- 10 Brown & Williamson, Timothy Hartnett, by one of Brown
- 11 & Williamson's market-research firms; right?
- 12 A. Yes.
- 13 Q. All right. Now a market-research firm is a firm
- 14 that Brown & Williamson hires in order to try and do
- 15 research and tell them information about the
- 16 cigarette market; correct?
- 17 A. Yes, ma'am.
- 18 Q. And Brown & Williamson has done that since the
- 19 first days it began selling cigarettes, hasn't it,
- 20 hired market-research firms?
- 21 A. I'm not sure of the historical implications, as
- 22 long as we've been in business, but I know that we
- 23 have used market-research firms for a great deal of
- 24 our history.
- 25 Q. You use them today, don't you?

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1 A. I use them today. I don't know if we used them  
2 in the 1800s.

3 Q. All right. Fair enough.

4 But you would agree that in the ordinary course  
5 of Brown & Williamson's business, it hired  
6 market-research firms who then wrote reports like  
7 Exhibit 4442 and presented them to Brown &  
8 Williamson.

9 MR. RICHARDSON: Objection to the form of  
10 the question.

11 A. The -- This report or a similar report such as  
12 this from a market-research firm would be -- in fact  
13 in this one is a -- a summary of a preliminary report  
14 of this market-research firm's recommendations and  
15 impressions that they have gained from a study.

16 Q. All right. But just so we're clear, this  
17 market-research firm wasn't doing this for free,  
18 Brown & Williamson was paying them to do it; right?

19 A. Yes, they were compensated for this.

20 Q. Brown & Williamson compensated them.

21 A. On an ordinary course of business, yes. I'm not  
22 sure of this particular relationship, but suffice it  
23 to say, we engage with market researchers compensated  
24 by Brown & Williamson.

25 Q. Just so the ladies and gentlemen understand,

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1 typically what Brown & Williamson will do is that

2 they will give an assignment to the market-research

3 firm; right?

4 A. That may be part of what we ask them to do, yes.

5 Q. And then the market-research firm will fulfill

6 the assignment and write a report.

7 A. That is correct.

8 Q. Ad agencies work the same way. Brown &

9 Williamson hires an ad agency to develop an ad or a

10 series of advertisements, gives them an assignment

11 and then the ad agency goes out and tries to fulfill

12 that assignment; right?

13 A. Again, part of it. They also may make

14 recommendations and observations as part of or

15 ancillary to their studies as well.

16 Q. All right. Now in this particular report,

17 Exhibit 4442, Mr. Hartnett was provided information

18 on the total number of males smoking in the age range

19 17 to 20; right?

20 A. Could you draw me to a page that you're

21 referencing that, please?

22 Q. Yes, there's a table that talks about the

23 cigarette market on page 298; right?

24 A. Yes, ma'am.

25 Q. And it gives information about the number of

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1 males smoking in the range 17 to 20 years old;

2 right?

3 A. Yes. Well, it is reflected that is part of the

4 table, yes.

5 Q. All right. Now there's some information

6 presented in the paragraph above the table; right?

7 A. Yes, there is a paragraph or two.

8 Q. Now if we go on further in the document at page

9 thirty -- 304 there are some recommendations about

10 the importance of the youth market to Brown &

11 Williamson as far as Raleigh cigarettes go; correct?

12 MR. RICHARDSON: Objection to the form of

13 the question.

14 A. Bring me to the page you're referencing, please.

15 Q. 304.

16 A. All right. All right.

17 Q. Sir, there in the middle paragraph or the second

18 paragraph on the page is information about the

19 importance of the Raleigh cigarette campaign and

20 young people; right?

21 MR. RICHARDSON: Same objection.

22 A. Let me read this, if I could.

23 Q. Certainly.

24 A. The text on page 304 -- and that's why I wanted

25 to read it -- is not in the context of the very first

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1 table that you drew my reference to, and it is the  
2 agency's view of drawing some similarities from  
3 research they've conducted that is drawn to other  
4 tables in this report, which again is, and I think  
5 you said it best, is again a recommendation viewed as  
6 the agency's point of view, which may be different,  
7 completely, than Brown & Williamson's point of view.

8 Q. Well it says here, "From this table it can be  
9 seen that the Raleigh campaign has established the  
10 most desirable penetration pattern, i.e., the highest  
11 performances are among the younger people and among  
12 men..." Did I read that correctly so far?

13 A. You read what was stated correctly.

14 Q. All right. Then it goes on to say, "Since most  
15 people tend to be loyal to one brand over long  
16 periods of time and since advertising impressions are  
17 consistently higher for the brand people prefer, it  
18 is desirable to have a disproportionately high  
19 penetration among the younger people in order to  
20 influence their preferences"; right?

21 A. That is what the stated opinion of this report  
22 is.

23 Q. Well sir, Brown & Williamson never fired this  
24 advertising agency or this market-research firm, did  
25 they?

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1 A. I don't know that, ma'am.

2 Q. Well isn't it a fact that Brown & Williamson  
3 went on to try and aim advertising for various of its  
4 brands directly at young people in order to try and  
5 influence their preference as early starters?

6 MR. RICHARDSON: Objection to the form of  
7 the question.

8 A. No. No, ma'am, that is not correct.

9 Q. Well sir --

10 A. As we talked about this document itself, and  
11 again as we look at it, a "PRELIMINARY SUMMARY REPORT  
12 ON RALEIGH" by a third party group, and this again is  
13 -- they admit in their opening statement that it is  
14 a condensed summary of their analysis and their  
15 recommendations, so again it is recommendations that  
16 I don't know were ever put into place, became a  
17 marketing practice of the company.

18 Q. Well sir, let me ask you this. Is it Brown &  
19 Williamson's policy to market to people under 21?

20 A. To market to people under 21?

21 Q. Yes.

22 A. Brown & Williamson's policy is not to market to  
23 consumers under the age of 21, ma'am.

24 Q. Why?

25 A. That has been our long-standing policy with the

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1 company as -- beyond the time I came to work here.

2 It's a way of life. That is simply the way we

3 conduct our business.

4 Q. Why?

5 A. I'm sure I don't -- I don't understand what you  
6 mean.

7 Q. Well why is it that Brown & Williamson doesn't  
8 market, as you say, to people under the age of 21?

9 A. The position of the company, and it has been a  
10 long-standing position of the company, is very clear,  
11 that smoking is an adult custom, it is something that  
12 we look for adults to be able to choose and select  
13 the brand of their choice, so the long-standing  
14 practice of the things that -- that occur with Brown  
15 & Williamson in terms of marketing programs, and to  
16 that context we'll talk marketing targeted, directed  
17 towards under 21, does not occur. There may be  
18 recommendations and observations made by a third  
19 party, but to the extent, and notwithstanding those  
20 recommendations, the mere fact of -- or the real fact  
21 is is that Brown & Williamson has not done that and  
22 targeted under the age of 21 in its marketing  
23 activities.

24 Q. Brown & Williamson told the Secretary of Health,  
25 Education and Welfare that it did not market to

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1 children under the age of 21, didn't it?

2 A. I do recall a document that stated that, ma'am.

3 (Plaintiffs' Exhibit 4443 marked for  
4 identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as  
7 Plaintiffs' Exhibit 4443, this is a document bearing  
8 the Bates number 660008959; right?

9 A. That is correct.

10 Q. And it's a letter from C. I. McCarty to the  
11 Secretary of Health, Education and Welfare, Joseph  
12 Califano; right?

13 A. Yes, ma'am.

14 Q. And basically in this letter Mr. McCarty set  
15 forth Brown & Williamson's position about -- its  
16 public position about wanting children -- with regard  
17 to children and smoking; right?

18 A. I think it was confirming the strict policy, not  
19 setting forth, but it was establishing that -- or a  
20 restatement of how we perform.

21 Q. And it says in the last sentence, "This company  
22 does not want children to smoke. We maintain a  
23 strict policy against promoting cigarettes to persons  
24 under 21 years of age and no advertising I have seen  
25 supports your charges;" right?

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1 A. Yes, that's what it states.

2 Q. Mr. Califano had charged that the American  
3 cigarette manufacturers marketed directly to  
4 children; right?

5 A. I believe that was his charge.

6 Q. And this letter, Exhibit 4443, was in response  
7 to that charge, wasn't it?

8 A. Yes, that's what it states.

9 Q. It would have been inappropriate for Mr. McCarty  
10 to falsely state Brown & Williamson's true position,  
11 wouldn't it?

12 MR. RICHARDSON: Objection to the form of  
13 the question.

14 A. Would you please ask me that again, ma'am?

15 Q. Certainly. It would have been inappropriate for  
16 Mr. McCarty in this letter to falsely state Brown &  
17 Williamson's true position with regard to children  
18 and smoking, wouldn't it?

19 MR. RICHARDSON: Same objection.

20 A. Excuse me. Your question's a little confusing.  
21 I think what was appropriate is for Mr. McCarty to  
22 state the long-standing policy of Brown & Williamson  
23 to the secretary, which is exactly what occurred  
24 here.

25 Q. Well, if he misstated that position it would be

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1 inappropriate, wouldn't it?

2 A. Misstate in what -- What do you mean,

3 "misstated," ma'am?

4 Q. Well if he, for example, said something that

5 wasn't true, that would be inappropriate, wouldn't

6 it, sir?

7 A. Yes, it would, ma'am.

8 Q. Now you understand that Mr. McCarty wrote again

9 to Mr. Califano the year following Exhibit 4443,

10 don't you?

11 A. I am -- I'm aware of a document that followed up

12 that, or documents.

13 (Plaintiffs' Exhibit 4444 marked for

14 identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as

17 Plaintiffs' Exhibit 4444, this is a letter that Mr.

18 McCarty sent on Brown & Williamson's behalf to Joseph

19 Califano, the Secretary of Health, Education and

20 Welfare, a year after he sent Exhibit 4443; right?

21 A. Yes, ma'am, a little over a year.

22 Q. And Mr. McCarty was writing in his position as

23 chairman of Brown & Williamson Corporation; right?

24 A. That is correct.

25 Q. Now in this --

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1        This letter was written in response to a request  
2    from Secretary Califano that Brown & Williamson and  
3    the other American cigarette manufacturers provide  
4    money to -- that would finance a special campaign  
5    emphasizing that cigarette smoking was not for  
6    children; right?

7    A.    I draw that out of this letter as well, yes.

8    Q.    All right. And Mr. McCarty declined, on Brown &  
9    Williamson's behalf, to provide some funds to engage  
10   in that special campaign emphasizing or trying to  
11   prevent youth smoking; right?

12   A.    It appears that way. Could I spend a little  
13   time and just look at this document for a second?

14   Q.    Certainly.

15   A.    Read -- And respond to it.

16        Okay. I've read the letter.

17   Q.    Now sir, in this letter, Exhibit 4444, Mr.  
18   McCarty again sets forth Brown & Williamson's claim  
19   that it does not want children to smoke and that it  
20   -- Brown & Williamson maintained a strict policy  
21   against promoting cigarettes to persons under 21  
22   years of age; right?

23   A.    Correct, he sets forth the Brown & Williamson  
24   policy.

25   Q.    All right. Sir, isn't it true that it was Brown

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1 & Williamson's objective to actually maximize the  
2 company's position amongst potential new smokers in  
3 the 16-to-25-year-old-age group?

4 A. I'm not sure if I can abase that. I know if you  
5 look at the 16 to 25, clearly in that group at the  
6 age of 21 I think, which is responsive to the policy  
7 we have, I would say part of your question, of the 21  
8 to 25 within that group is very important to Brown &  
9 Williamson.

10 Q. Well sir, isn't it true that the young smoker  
11 was considered to be of preeminent importance to  
12 Brown & Williamson?

13 A. In what regard, ma'am?

14 Q. As a potential market for new smokers.

15 A. As a market to be looked at at the age of 21,  
16 yes.

17 Q. I'm sorry, sir, I'm talking about younger than  
18 age 21.

19 Isn't it true that Brown & Williamson considered  
20 the younger-than-age-21 market to be preeminent in --  
21 of importance in replacing smokers who were quitting?

22 A. I think we -- we studied it, but in terms of  
23 recognizing its importance, I don't see that, ma'am.  
24 Again that -- the population is studied in terms of  
25 understanding what the future would look like in

1 terms of the smoking population and the business, and  
2 to that part that information is important.

3 (Plaintiffs' Exhibit 4445 marked for  
4 identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as  
7 Plaintiffs' Exhibit 4445, this is a document Bates  
8 numbered 7792177940; right?

9 A. 794, last three digits?

10 Q. I'm sorry, 7794 are the last four digits.

11 A. Yes.

12 Q. And this is a document from Brown & Williamson's  
13 files, isn't it, sir?

14 A. I'm not sure if it is from the files, ma'am.

15 Q. Well it says "(B&W) PROTECTED BY MINNESOTA  
16 TOBACCO LITIGATION PROTECTIVE ORDER" at the top,  
17 doesn't it?

18 A. It does say that.

19 Q. All right. If you turn to the second page of  
20 the document, there are objectives listed; right?

21 A. Yes.

22 Q. And among those is "To examine and analyze the  
23 phenomenon of the new smoker"; correct?

24 A. That is a stated objective of this project not  
25 completed by Brown & Williamson but by Kenyon &

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1 Eckhardt.

2 Q. All right. Well sir, so you know that this did  
3 come from Brown & Williamson's files; is that right?

4 A. No. What I said is I was not -- I did not know  
5 if this came from the files. You referenced the  
6 protected action at the top. But again, it -- it is  
7 a project that was completed by Kenyon & Eckhardt for  
8 Brown & Williamson, so I didn't know if it was a  
9 Kenyon & Eckhardt document or a B&W document, ma'am.

10 Q. All right. But Kenyon & Eckhardt was a  
11 market-research firm that Brown & Williamson hired in  
12 order to collect data about the new-smoker market;  
13 right?

14 A. I'm not sure if that was their assignment.

15 Q. Well sir, if we look at the objectives on the  
16 second page, we see among them "To offer...early  
17 suggestions for maximizing the company's position in  
18 this segment"; right?

19 A. That is what is stated, ma'am.

20 Q. And "this segment" refers to the new smoker  
21 market; right?

22 A. Yes, and I'm not sure what they mean by that at  
23 this point.

24 Q. All right. Well sir, would you turn to the page  
25 that ends with Bates number 7807.

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1 A. 7807?

2 Q. Yes. And there is provided information on share  
3 of users by age and sex for different brands of  
4 cigarettes; right?

5 A. Yes, ma'am.

6 Q. That talks about market share, doesn't it?

7 A. No -- Well, no, it talks about -- Well, share of  
8 a smoker population. I don't think it ties to market  
9 share --

10 Q. All right.

11 A. -- directly.

12 Q. And it gives information on smokers in the range  
13 age of 16 to 25 for each of several different  
14 cigarettes; right?

15 A. Yes, ma'am.

16 Q. All right. We've been mentioning market share  
17 just a moment ago. What does "market share" refer  
18 to?

19 A. "Market share" refers to the relative percent of  
20 the business a brand would represent of the total  
21 smoking or cigarette business.

22 Q. How much business does the under 21 smoker  
23 provide for the total of the smoking business?

24 A. What --

25 MR. RICHARDSON: Objection to the form of

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1 the question.

2 A. I mean, what is the context of your question?

3 We're looking at historical documents. I'm not sure

4 what you mean.

5 Q. No, no, apart from the document.

6 A. Okay.

7 Q. Well what's a market share point worth?

8 A. In?

9 Q. Dollars.

10 A. I would -- There's -- There's a wide range of

11 numbers that would assign to that, but let's just say

12 it's -- it's very valuable. I could give you a range

13 depending on how people would view it.

14 Q. All right. Well give me a range.

15 A. In today's market, 80 to maybe a hundred million

16 dollars.

17 Q. That's for one market share; is that right? One

18 point or one percentage of a market share?

19 A. Yes.

20 Q. Now sir, in today's market how many or -- I'm

21 sorry. Strike that. Very bad question.

22 How much of the cigarette market today is under

23 21 smoking?

24 A. I don't know the answer to that, ma'am.

25 Q. Can you give me an estimate?

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1 A. Since I don't study or do anything with that  
2 part of the segment it would be very difficult for me  
3 to say, ma'am.

4 Q. Well sir, would you estimate it at approximately  
5 three share points?

6 A. I don't know. Again it would only be a pure  
7 estimation on my part that -- and again, I would not  
8 be sure since I really don't study that or -- or  
9 direct programs to that area. So I'm trying to be  
10 responsive to your question.

11 Q. Well sir, if we turn to the page of Exhibit 4445  
12 that ends with Bates number 827, the document sums up  
13 the importance of the young smoker in the cigarette  
14 market, doesn't it?

15 MR. RICHARDSON: Objection to the form of  
16 the question.

17 A. 7827, ma'am?

18 Q. Yes, sir.

19 A. On this document on -- I believe from '74, that  
20 is what is stated.

21 Q. All right. And it says here, "The younger  
22 smoker is of pre-eminent importance," doesn't it?

23 A. That is what Kenyon & Eckhardt added in, yes.

24 Q. All right. And it says they're significant in  
25 numbers; right?

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1 A. That is what it says.

2 Q. And it also says "lead in to prime market";  
3 right?

4 A. Yes.

5 Q. That means that people who start smoking in the  
6 16 to 21 year olds lead in to be the primary market  
7 for cigarette smokers for the cigarette industry  
8 after they reach the age of 21, doesn't it?

9 MR. RICHARDSON: Objection to the form of  
10 the question.

11 A. That would be I guess your interpretation. I'm  
12 not sure of the context of what was said -- what was  
13 meant with that statement, ma'am.

14 Q. Well it's -- goes on to say, "Starts brand  
15 preference patterning." That refers to the fact that  
16 it is known within the cigarette industry that a  
17 smoker who begins smoking early will stick with a  
18 brand; right?

19 MR. RICHARDSON: Same objection.

20 A. That it -- What I gather from that is that  
21 "brand preference patterning" is that there is an  
22 essence of loyalty that may exist, but there is also  
23 -- patterning also would include switching.

24 Q. All right, sir. Would you turn to the last page  
25 of the document. There is an action plan listed

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1 there, isn't there?

2 A. Yes, there is, ma'am.

3 Q. All right. And one of the things it says is

4 "Input from studies, meetings and special continuing

5 creative exploratory units"; right?

6 A. Yes.

7 Q. And it talks about creating a living laboratory;

8 right?

9 A. The statement, yes, is there.

10 Q. Now sir, Brown & Williamson didn't discipline

11 Kenyon & Eckhardt for coming to these conclusions

12 about the importance of starter smokers to the

13 cigarette industry, did it?

14 A. I don't --

15 MR. RICHARDSON: Objection to the form of

16 the question.

17 A. I don't know if they disciplined them, ma'am.

18 Q. Well they continued to use Kenyon and Eckhardt

19 as a market-research firm after Exhibit 4445 was

20 completed; right?

21 A. Yes, but that wasn't your question. You asked

22 me if we disciplined them, and I don't know if we did

23 or not.

24 Q. All right. And my next question was: Brown &

25 Williamson continued to use Kenyon & Eckhardt, didn't

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1 it?

2 A. I believe so.

3 Q. And as a matter of fact, Brown & Williamson  
4 targeted Kool's growth at the 16-to-25-year-old  
5 market, didn't it?

6 A. What do you mean "targeted"? We studied the  
7 market. I'm trying to understand what you mean when  
8 we are targeting that section, ma'am.

9 Q. Well sir, Brown & Williamson did a marketing  
10 effort that was directed for Kool cigarettes, at or  
11 around the time Exhibit 4445 was written, that was  
12 targeted at 16 to 25 year olds, didn't it?

13 A. No, ma'am.

14 MR. RICHARDSON: Objection to the form of  
15 the question.

16 A. Again what we've stated is the -- the marketing  
17 programs, advertisements, promotions are targeted,  
18 and I think it's clearly the case, to adult smokers  
19 21 plus.

20 (Plaintiffs' Exhibit 4446 marked for  
21 identification.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been marked as  
24 Plaintiffs' Exhibit 4446, this is a document you saw  
25 in preparation for your deposition; right?

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1 A. I believe so.

2 Q. Exhibit 4446 is Bates numbered 680135996;

3 right?

4 A. Correct.

5 Q. And this is an internal Brown & Williamson

6 document that talks about efforts that Brown &

7 Williamson has made to attract Kool smokers, doesn't

8 it?

9 MR. RICHARDSON: Objection to the form of  
10 the question.

11 A. No, ma'am, I don't see that. Unless I read this

12 document, but what I see it states "Here is a list of

13 conclusions..." which would be the conclusions of

14 whoever was the author of this document, so I don't

15 believe it is correct to say "yes" to your question.

16 Q. Well sir, all of the people who are listed as

17 either authoring or receiving this document were

18 Brown & Williamson employees at the time this

19 document was written; right?

20 A. Yes, ma'am.

21 Q. And it says at the bottom or, I'm sorry, it says

22 under point 1, "Kool Longs' female effort appears to

23 be working"; right?

24 A. Yes, that's what it states.

25 Q. And when it refers to "Kool Longs' female

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1 effort" we're talking about marketing activities in  
2 this document, aren't we?

3 MR. RICHARDSON: Objection to the form of  
4 the question.

5 A. Again, I'm not sure what the efforts are, but  
6 suffice it to say, you could presume it means efforts  
7 that may be in terms of marketing as well. I don't  
8 know the context of the statement, ma'am.

9 Q. And at point 3 it says, "KOOL has shown little  
10 or no growth in share of users in the 26 + age  
11 group. Growth is from 16 - 25 year olds. At the  
12 present rate, a smoker in the 16 - 25 year age group  
13 will soon be three times as important to KOOL as a  
14 prospect in any other broad age category"; correct?

15 A. That is what it states.

16 Q. All right. Sir, and if we turn to the third  
17 page of the document that ends with Bates number 998  
18 there is a discussion of Kool's stake in the 25 --  
19 I'm sorry.

20 If we turn to the third page of the document,  
21 there is a discussion of Kool's stake in the  
22 16-to-25-year-old population; right?

23 A. There is a statement there.

24 Could I read it, please?

25 Q. Certainly. It says, "KOOL's stake in the 16 -

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1 25 year old population segment is such that the value  
2 of this audience should be accurately" weighed "and  
3 reflected in current media programs." Have I read it  
4 correctly so far?

5 A. You've read what is written, yes.

6 Q. And the reference here to Kool's stake in the 16  
7 to 25 year old population being weighed and reflected  
8 in current media programs meant that Brown &  
9 Williamson was going to look at how to get to that  
10 audience the best with its marketing for Kool. Isn't  
11 that true, sir?

12 MR. RICHARDSON: Objection to the form of  
13 the question.

14 A. What I read from the conclusions of this author  
15 is that -- and if we continue that statement, what is  
16 all said, "As a result, all magazines will be  
17 reviewed to see how efficiently they reach this group  
18 and other groups as well."

19 There is a statement of review, a statement of  
20 looking at things, but there is not a statement that  
21 we will go actively out and run ads to go below the  
22 age of 21. I don't read that in here.

23 Q. Well sir, you've read documents that followed  
24 Exhibit 4446 chronologically which showed that Brown  
25 & Williamson did exactly that; isn't that true?

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1 A. No, ma'am.

2 Q. You didn't read those documents in preparation  
3 for your deposition?

4 A. Documents that indicated that we targeted  
5 advertising to the under the 21 age group?

6 Q. Yes, sir.

7 A. I have not seen documents that we targeted  
8 advertising to under 21, ma'am.

9 Q. Sir, isn't it true that in a -- in an attempt to  
10 penetrate the, quote unquote, youth market, Brown &  
11 Williamson designed and implemented a campaign that  
12 included Minneapolis as one of its target audiences  
13 that focused on young people to try and encourage  
14 them to smoke Kools?

15 A. And "young people" you're referring to under the  
16 age of 21?

17 Q. Yes, sir.

18 A. No, ma'am.

19 (Plaintiffs' Exhibit 4447 marked for  
20 identification.)

21 BY MS. WIVELL:

22 Q. Sir, showing you what's been marked as  
23 Plaintiffs' Exhibit 4447, this is a document that  
24 begins with the Bates number 779101338; right?

25 A. Yes, ma'am.

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1 Q. Did you see this document in preparation for  
2 your deposition today?

3 A. I had reviewed this document I believe, ma'am.

4 Q. And it talks about setting up a program --  
5 Strike that.

6 This is an internal Brown & Williamson document,  
7 isn't it, sir?

8 A. It's stated as an internal correspondence, yes.

9 Q. And it talks about setting up a program that  
10 would focus several cities to try and target the  
11 young smoker; right?

12 A. Would it be possible to -- Again you've asked me  
13 for one statement of the essence of the document. If  
14 you'd like, I would like to read this to respond to  
15 the question, please.

16 Q. Well sir, let me try and rephrase your  
17 question.

18 It says at the bottom of the third paragraph,  
19 "Our plan is to attempt to reach these smokers  
20 through a combination of national magazines  
21 supplemented by local 'young adult' media"; right?

22 A. That is what is stated, ma'am.

23 Q. And sir, one of the target audiences for this  
24 advertising campaign was Minneapolis; right?

25 MR. RICHARDSON: If you need to read the

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1 entire document to respond to her questions, you  
2 should feel free to do so, Mr. Stowe.

3 THE WITNESS: I will do that then.

4 A. Okay.

5 Q. You done, sir?

6 A. Yes. To the extent that I could read a couple  
7 of the paragraphs on page 2 that were very difficult  
8 but --

9 Q. One of the target audiences for the advertising  
10 campaign that's exis -- or that's described in  
11 Exhibit 4447 is Minneapolis; right?

12 A. One of the markets that is proposed. Again,  
13 this document is a proposal for discussion of issues,  
14 and one of the cities identified was Minneapolis,  
15 ma'am.

16 Q. All right. And in fact among the proposed plans  
17 was to -- I'm sorry. Strike that.

18 This was a proposal for a Kool starter smoker  
19 program; right?

20 A. I don't get that inference. It's a -- It's a  
21 change, it's a proposal for change, "Further Changes  
22 in the KOOL Media Plan."

23 Q. Well sir, if you turn to the page that ends with  
24 Bates number 341, we see a heading "KOOL STARTER  
25 SMOKER PROGRAM"; right?

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1 A. That is the -- the heading on Attachment "B" of  
2 the page, yes.

3 Q. And one of the things that this program intended  
4 to do was to put ads for Kool cigarettes in magazines  
5 that had a large youth readership; isn't that true?

6 MR. RICHARDSON: Objection to the form of  
7 the question.

8 A. From looking at the Attachment "B" where you  
9 have stated, and it states in the article here, of  
10 Kool starter smoker program, that it is looking to  
11 magazines with readership of an index of 18 to 24 to  
12 be considered, again, and I state "considered"  
13 because I do not know if anything contained within  
14 this document ever took place, ma'am.

15 Q. All right. Well among the magazines that were  
16 considered for ads to be placed for Kool smoke -- or  
17 Kool cigarettes was National Lampoon; right?

18 A. National Lampoon shows up on this list, ma'am.

19 Q. As does Penthouse and Rolling Stone; right?

20 A. Yes, ma'am.

21 Q. And as a matter of fact, Brown & Williamson also  
22 considered, as part of this campaign toward young  
23 smokers, was to market through Beetleboards; right?

24 MR. RICHARDSON: Objection to the form of  
25 the question.

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1 A. Beetleboards were a proposal contained within  
2 this document, ma'am.

3 Q. All right. And "Beetleboards" were advertising  
4 signs that were placed on the sides of Volkswagen  
5 Beetles that were then sent out to be parked or to  
6 drive around places where young people congregated;  
7 right?

8 MR. RICHARDSON: Objection to the form of  
9 the question.

10 A. The document describes the use of Beetleboards  
11 as a local media, but I cannot find anywhere it would  
12 read that is what Beetleboards will be used for,  
13 ma'am.

14 Q. Well sir, are you aware of other documents that  
15 reference Beetleboards that talk about Kool  
16 advertising being placed out -- placed on these sides  
17 of these Volkswagens and then sent out to beaches and  
18 near clubs where young folks assemble?

19 A. I'm aware of documents that talked about the use  
20 of Beetleboards in its marketing plan.

21 Q. And that was the purpose of the use of  
22 Beetleboards, wasn't it?

23 A. The purpose of the use of Beetleboards was to  
24 gain awareness of the brand that was being advertised  
25 at the time, which was Kool, but I'm not sure of the

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1 context that you said as attract to a young, quote  
2 young market. I'm not sure what you're defining  
3 there as a "young market."

4 Q. Well sir, let me ask you this. One of the  
5 things that was discussed in this advertising  
6 strategy was placing advertisements in places like  
7 Greyhound Bus depots where young -- during the season  
8 when young people were traveling a lot, for example,  
9 the holidays and so forth; --

10 MR. RICHARDSON: Objection to the form of  
11 the question.

12 Q. -- right?

13 MR. RICHARDSON: I'm sorry. Objection to  
14 the form of the question.

15 A. I am not sure where you're drawing that. I'm  
16 looking at page 2.

17 Q. I'm looking at page 2 also, the paragraph that's  
18 "D" that refers to placing ads in Greyhound Bus  
19 terminals "during high student travel periods." Do  
20 you see that, sir?

21 A. Now I can see it down there.

22 Q. Sir, you understand that the campaign that's  
23 described in Exhibit 4447 was actually implemented  
24 and carried out, wasn't it?

25 A. I do not know that for a fact, ma'am. Again

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1 because what it is stating in here is that this is a  
2 document with some proposals and recommendations,  
3 needs to be further approved, essential that we  
4 resolve the issues so that we may fund these out of  
5 existing media plans. So again, I don't know from  
6 this document, as I read it, that any of those plans  
7 may have taken place or a portion of them that are  
8 contained within that. This was not a final  
9 marketing document.

10 (Plaintiffs' Exhibit 4448 marked for  
11 identification.)

12 BY MS. WIVELL:

13 Q. Sir, showing you what's been marked as  
14 Plaintiffs' Exhibit 4448, this is a document that was  
15 written by Ted Bates advertising to Brown &  
16 Williamson; right?

17 A. Yes, ma'am.

18 Q. And Ted Bates was -- was an agency that was  
19 hired by Brown & Williamson in order to analyze  
20 brand-switching studies; right?

21 A. I don't believe that that was -- that was the  
22 context of their primary role for us, ma'am.

23 Q. What do you understand their primary role was?

24 A. As looking at "Ted Bates new york/advertising,"  
25 they were -- their services were engaged primarily to

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1 be an advertising agency for a brand that may have  
2 been assigned to them from Brown & Williamson.

3 Q. And the brand that was assigned to them from  
4 Brown & Williamson was Kool, wasn't it?

5 A. At the time of this document it looks like that  
6 they're referencing the -- I don't know if that was  
7 the actual agency assignment, ma'am, but they are  
8 referencing "Kool" and "Analysis of Brand Switching"  
9 so I will presume that they are responsible for the  
10 Kool brand.

11 Q. All right. Now in the first -- Or I'm sorry.  
12 Strike that.

13 The second paragraph of Exhibit 4448 it says,  
14 "It should be mentioned at the outset that Kool's  
15 two strongest market segments - the Black and the  
16 young Smoker segments - are again under-represented  
17 in this Wave of the Study"; right?

18 A. That is what it states.

19 Q. And you understood that Kool's strongest market  
20 was the black African American market and the young  
21 smoker segment; right?

22 A. I don't -- I've never stated that.

23 Q. Well you understand that to be the case, don't  
24 you, sir?

25 A. From -- Are you asking for what my opinion is of

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1 the Kool business today or in the context of this  
2 document?

3 Q. In the context of this document, sir.

4 A. What I would gather from this document is that  
5 they are making a statement that again it's the  
6 agency's opinion they've looked at the segments and  
7 Kool -- and again I have not -- I would like to read  
8 the whole thing if you would like me to, but I want  
9 to be responsive to your question.

10 The agency's view, which is mentioned in this,  
11 is that it is mentioned from the outset that Kool's  
12 two strongest market segments are again  
13 under-represented. So I'm not sure what that is  
14 meaning, if they're the strongest they're clearly  
15 under-represented, and so I'm not sure of the  
16 question or how to frame it around what is actually  
17 said in the document.

18 Q. All right, sir. You understand that at the time  
19 this document was written in the mid-'70s, Brown &  
20 Williamson was aiming its advertising efforts at the  
21 16-to-25-year-old market for Kool; isn't that true?

22 A. No, ma'am.

23 Q. Could you turn to the page that ends with Bates  
24 number 816. There are some conclusions; right?

25 A. Yes, ma'am.

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1 Q. And the first conclusion is that "Kool's effort  
2 against the 16-25 age group continues to be working";  
3 right?

4 A. That is the agency's conclusion, yes.

5 Q. All right. And the "effort" that's referred to  
6 is Brown & Williamson's marketing effort; isn't that  
7 true?

8 A. Again in response to a similar question earlier,  
9 I'm not sure if that's what it means. It may be a  
10 part of the marketing mix, ma'am.

11 Q. Sir, but as you understand the reference to  
12 "effort" in relationship to "marketing and  
13 advertising," it refers to a marketing effort,  
14 doesn't it?

15 MR. RICHARDSON: Objection to the form of  
16 the question.

17 A. Within the context of this document, and since  
18 it is an advertising agency then I would say it is  
19 presumably a marketing effort they're talking about.

20 Q. And it also goes on to state in this document  
21 that "Kool's effort is successfully attracting new  
22 smokers"; right?

23 A. That was an agency conclusion, yes, ma'am.

24 Q. It goes on to say, While Kool's overall  
25 performance among the" 16-25 year old -- "16-25 age

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1 group is strong, it is not limited to this group in  
2 terms of starters"; right?

3 A. Yes, that is what is stated in the agency  
4 document.

5 Q. And isn't it true that Brown & Williamson  
6 attempted to create a specific style for Kool in  
7 which it did try to attract young starters by  
8 advertising in magazines like Rolling Stone and  
9 National Lampoon and Motor Trend?

10 A. No, ma'am.

11 MR. RICHARDSON: Objection to the form of  
12 the question.

13 (Plaintiffs' Exhibit 4449 marked for  
14 identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as  
17 Plaintiffs' Exhibit 4449, this is a document that  
18 begins with the Bates number 779101275; right?

19 A. That is correct.

20 Q. And this is an internal Brown & Williamson  
21 document that recommends a Kool FOB program; right?

22 A. Yes, ma'am.

23 Q. What is an "FOB program"?

24 A. Well "FOB" to me, and I would have to read  
25 further to see if FOB references flip-open box.

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1 Q. All right. So what they're talking about is a  
2 program for Kools to be marketed in flip-open boxes;  
3 right?

4 MR. RICHARDSON: Objection to the form of  
5 the question. If you need to read the entire  
6 document to properly respond to her question, you  
7 should feel free to do so, Mr. Stowe.

8 THE WITNESS: Okay. Well I would like to  
9 take that time to do that.

10 A. Okay. I've completed it.

11 Q. All right, sir. What's being talked about in  
12 Exhibit 449 [sic] is a marketing program for Kools to  
13 be marketed in flip-open boxes; right?

14 A. Well as I read the ar -- the document, ma'am,  
15 what I see is that Kools were already made in a box  
16 and there was an opportunity, which is in the second  
17 paragraph, that Kool flip-open box has a probability  
18 of success of penetrating the young adult franchise  
19 of Marlboro box. So this was a marketing opportunity  
20 for an existing style of Kool against adult smokers  
21 of Marlboro where they had strength in the  
22 marketplace.

23 Q. Well sir, if we turn back to the proposed  
24 placement of ads in national magazines, we see that  
25 the supposed campaign that was marketed toward young

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1 adults was going to include placement of ads in  
2 National Lampoon and Rolling Stone; right?

3 A. Yes, on Attachment "C" they are part of the  
4 proposed program.

5 Q. And isn't it true that the target audience for  
6 this proposed program that's described in Exhibit 449  
7 was the 16-to-25-year-old smoker?

8 A. Ma'am, I'm just going to have -- I can't make a  
9 statement. It's not stated within the document what  
10 that plan is, and again it should be noted that it is  
11 just a proposal and asking for approval to proceed  
12 with this flip-open plan, so I don't know if this  
13 ever took place or was ever done.

14 Q. Well sir, I would like the answer to that  
15 question whether the advertising campaign that is  
16 described in 449 [sic] was ever done, and you're  
17 telling me that as Brown & Williamson's spokesman you  
18 can't tell us today whether or not that campaign was  
19 ever undertaken; is that right?

20 A. Then I misunderstood your question. I thought  
21 you were asking me from the basis of this document  
22 was the 16-to-25-year-old program put in place, and I  
23 said it was not stated in this plan.

24 Q. Well sir, let's take a look and see if maybe  
25 this next document will shed some light on it.

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1 (Plaintiffs' Exhibit 4450 marked for  
2 identification.)

3 BY MS. WIVELL:

4 Q. Sir, showing you what's been marked as  
5 Plaintiffs' Exhibit 4450, this is another report from  
6 the Ted Bates agency to Brown & Williamson concerning  
7 Kool smokers, isn't it?

8 A. That is the title of it, yes, ma'am.

9 Q. All right. And if --

10 For the record, Exhibit 4450 is Bates number  
11 777072896; right?

12 A. That is correct.

13 Q. And if we turn to the page that ends with Bates  
14 number 2903 we see reference to continues --  
15 "...effort against the 16-25 age group continues to  
16 be working", don't we, sir?

17 A. "2902" you said?

18 Q. 2903, sir.

19 A. In the conclusions from this article, this  
20 document from the agency, that is what they have  
21 stated.

22 Q. Well the agency was hired to report on precisely  
23 whether or not Brown & Williamson's marketing efforts  
24 were being effective in the 20 -- in the  
25 16-to-25-year-old age group. Isn't that true, sir?

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1 A. No, I don't know how we can make that  
2 statement. The agency is reporting on an analysis of  
3 the brand-switching study, and in this case it was  
4 for this particular time. And this is a summary of  
5 what the agency has reviewed with the information  
6 they had available. And again, it is the agency's  
7 point of view provided to Brown & Williamson.

8 Q. And it says, "Kool's performance among young  
9 smokers continues to be the highest in the industry  
10 with the exception of Marlboro and Newport"; right?

11 A. That is what is stated.

12 Q. All right. And it goes on to say, "Kool's  
13 effort is successfully attracting new smokers";  
14 right?

15 A. Yes, that is what is stated here, ma'am.

16 Q. And if we turn to the first page of the document  
17 we see that the -- according to the report, the  
18 brand, in other words, Kools, continues to be heavily  
19 skewed to young smokers, with 40 percent of the  
20 franchise in the 16 to 25 year old age group; right?

21 A. Draw me back to that page where you're at,  
22 please.

23 Q. First page, sir, under point 1, "Demographics."

24 A. Oh, the first --

25 Q. There it says, "The brand also continues to be

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1 heavily skewed" toward -- "to young smokers, with 40%  
2 of the franchise in the 16-25" year old "group";  
3 right?

4 A. That is what they have stated as a view of  
5 percent within that group, yes.

6 Q. And it's your testimony that you cannot tell us  
7 as you sit here today as Brown & Williamson's  
8 spokesperson, whether the advertising campaign that  
9 is described in Exhibit 4449 actually was implemented  
10 on behalf of Kools; is that right?

11 MR. RICHARDSON: Objection to the form of  
12 the question, argumentative.

13 A. What I can say is this, ma'am. Is that the  
14 marketing program proposed by -- in document 4449  
15 that covers a number of different approaches to the  
16 Kool flip-open box program, and then referencing a  
17 switching study two years later, I do not know what  
18 elements of this program were put forth, what was  
19 approved. Again, this was only a proposal.

20 So I can't answer your question because I don't  
21 know what elements of this program were approved or  
22 put in place since this document is a proposal.

23 Q. All right. Sir, how would you go about finding  
24 out the answer to that question, whether the campaign  
25 that's described in Exhibit 4449 was ever

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1 implemented?

2 A. Whether there was a Kool box promotion?

3 Q. Whether the recommended Kool program that's  
4 described in Exhibit 4449 was ever implemented.

5 A. Well it would be very difficult but as -- Again,  
6 since this is a proposal, and through the course of  
7 the year changes occur in a plan, as this program was  
8 set up to run exactly the way it's set here, there is  
9 no way to find out, ma'am.

10 Q. All right. Well sir, you would agree that one  
11 of the best indications about whether a marketing or  
12 advertising campaign is successful are the results,  
13 whether sales go up; isn't that true?

14 A. That is one dimension, yes.

15 Q. And at least according to the report that Brown  
16 & Williamson got after Exhibit 4449 was written,  
17 Brown & Williamson's sales to -- of Kool in the  
18 16-to-25-year-old age group were quite successful;  
19 right?

20 MR. RICHARDSON: Objection to the form of  
21 the question.

22 A. I don't know for the fact, ma'am, but what I'm  
23 viewing is it was the agency's opinion in this  
24 document that there was success.

25 (Plaintiffs' Exhibit 4451 marked for

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1 identification.)

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been marked as  
4 Plaintiffs' Exhibit 4451, this is a letter that Brown  
5 & Williamson received a copy of concerning a  
6 complaint that had been made about candy cigarettes  
7 that bore the Viceroy trademark; right?

8 A. Let me read this document, please.

9 Q. Let me rephrase the question.

10 Sir, showing you what's been marked as  
11 Plaintiffs' Exhibit 4451, this is a letter that Brown  
12 & Williamson wrote after receiving a complaint that  
13 candy cigarettes were utilizing the Viceroy brand  
14 name; right?

15 A. Yeah, it is a letter that Brown & Williamson  
16 sent to Four Star Candy stating our policy and --  
17 regarding the use of our brand names in -- in it  
18 looks -- apparently it looks like candy cigarettes.

19 Q. Now can we draw from this letter that this candy  
20 company had been utilizing the brand name Viceroy and  
21 the trademark on candy cigarettes it had been  
22 selling?

23 A. Just from the document itself, "B&W does not  
24 approve Four Star Candy's marketing of candy brands  
25 using B&W tobacco cigarettes..."

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1 Q. And it goes on to say, "...our silence with  
2 regard to such marketing does not constitute  
3 approval"; right?

4 A. That is correct.

5 Q. Now for the record, Exhibit 4451 is Bates number  
6 690148032; right?

7 A. That is correct.

8 Q. This letter doesn't tell Four Star Candy to stop  
9 selling those candy cigarettes with the Viceroy  
10 trademark, does it?

11 MR. RICHARDSON: Objection to the form of  
12 the question.

13 A. Within the document are you saying does it  
14 absolutely direct Four Star not to do it?

15 Q. Yes.

16 A. No -- Well --

17 Q. It doesn't, does it?

18 A. It says this: "It is B&W's policy not to  
19 undertake to advertise or promotions with special  
20 appeal to youth."

21 Q. Well sir, would agreeing to -- to allow a candy  
22 company to utilize a Brown & Williamson cigarette  
23 trade name be a promotion with special appeal to  
24 youth?

25 MR. RICHARDSON: Objection to the form of

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1 the question.

2 A. Ask me the question again, ma'am, I'm sorry.

3 Q. Certainly. Would you agree that to allow a  
4 candy company to utilize a Brown & Williamson  
5 cigarette trade name would be a promotion with a  
6 special appeal to youth?

7 MR. RICHARDSON: Same objection.

8 A. The use of -- of a Brown & Williamson brand name  
9 as it relates to use in tobacco, in the context of  
10 this document, in the context of I think it's also  
11 contained within the Cigarette Advertising Code, and  
12 also today's activities, yes, I would -- I would -- I  
13 personally would have a very big problem with that.

14 Q. Well did Brown & Williamson ever sue Four Star  
15 Candy to protect the Viceroy trade name?

16 A. I don't know that, ma'am.

17 Q. It didn't, did it?

18 A. I don't know that I said.

19 Q. Well sir, you're aware that Brown & Williamson  
20 had previously given permission for a candy cigarette  
21 manufacturer to allow use of its cigarette trade  
22 names and trademarks on candy cigarettes.

23 A. I'm aware that that had been done I believe in  
24 the '40s or '30s.

25 (Discussion off the stenographic record.)

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1 (Recess taken from 12:50 to 12:57 p.m.)

2 (Plaintiffs' Exhibit 4452 marked for  
3 identification.)

4 BY MS. WIVELL:

5 Q. Sir, showing you what's been marked as  
6 Plaintiffs' Exhibit 4452, this is a document bearing  
7 the Bates number 682068464; right?

8 A. Yes, ma'am.

9 Q. And this is a document in which -- that refers  
10 to Brown & Williamson's granting permission for a  
11 candy cigarette manufacturer to use Raleigh and Kool  
12 labels on candy cigarettes; right?

13 A. Yes, that's -- that is correct.

14 Q. And you understand that actually Brown &  
15 Williamson did allow its trademarks for Raleigh and  
16 Kool cigarettes to be used on candy cigarettes.

17 A. Yes, in the context of this 1939 document, yes.

18 Q. Now sir, Brown & Williamson also paid money for  
19 its cigarettes to be placed in films that young  
20 adults or -- I'm sorry. Strike that.

21 Brown & Williamson actually paid money for  
22 placement of its cigarettes in movies; right?

23 A. Yes, ma'am.

24 Q. All right. And does it continue to do that up  
25 to today?

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1 A. No, we don't.

2 Q. When did that practice stop?

3 A. I believe it was in the early '80s.

4 Q. All right, sir. You're -- You've seen documents  
5 that reflect the payment of money so that Brown &  
6 Williamson's cigarettes could be placed in various  
7 movies; right?

8 A. Essentially, yes, I have seen documents of that  
9 nature.

10 (Plaintiffs' Exhibit 4453 marked for  
11 identification.)

12 BY MS. WIVELL:

13 Q. Sir, showing you what's been marked as  
14 Plaintiffs' Exhibit 4453, this is a document which  
15 essentially summarizes various placements -- money  
16 that Brown & Williamson has paid for various  
17 placements so that its cigarettes will actually  
18 appear in movies; right?

19 A. Let me just review the -- what the context of  
20 the first sum -- sen -- paragraph is, and then I can  
21 respond.

22 In fact it looks like the objectives of this is  
23 a "review of current and past contractual  
24 agreements," "review of Company internal control  
25 systems," the "company" being Associated Film

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1 Promotions, and also "review of performance of AFP."

2 Q. All right. Do you know what "AFP" is?

3 A. AFP being, I just said, Associated Film

4 Promotions, ma'am.

5 Q. All right. But this document essentially

6 summarizes the amount of money which Brown &

7 Williamson had paid, up to the time the document was

8 written, to have its cigarettes placed in movies and

9 TV shows; right?

10 MR. RICHARDSON: Objection -- I'm sorry.

11 Objection to the form of the question.

12 A. In response to the question, ma'am, what it --

13 what this does is again, in -- as I stated, a summary

14 of what the report is, and it would deal with what we

15 did with -- during this period of time with

16 Associated Film Promotions so I'm not -- as long as

17 it's within the four corners of that statement.

18 Q. Now just for the record, Exhibit 4453 begins

19 with the Bates number 685086478; right?

20 A. Yes, ma'am.

21 Q. And if we look at the bottom of the second

22 paragraph of the document, it refers to payments that

23 Brown & Williamson had made to Associated Film

24 productions since the inception of the contract

25 totalling \$687,500 for special placements, and

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1 \$278,000 in retainers; right?

2 A. This is on page 2; correct?

3 Q. No, page 1, last sentence of the second complete  
4 paragraph.

5 A. Yes, that's what it states.

6 Q. So roughly you would agree that Brown &  
7 Williamson, at the time this document was written,  
8 had paid about \$965,000, roughly, give or take  
9 \$500,000, to have its cigarettes placed in movies  
10 such as the "Rocky" movies, and TV shows such as "The  
11 A Team"; right?

12 A. I can see where it states the movies, I would  
13 have to look further for the response to your other  
14 question.

15 Q. The last page, sir.

16 MR. RICHARDSON: Objection to the form of  
17 the question.

18 Q. Do you see reference to the television show "The  
19 A Team" at the bottom of the last page?

20 A. Yes, ma'am.

21 Q. All right. And --

22 A. But I see no reference to it in the document, so  
23 I'm not sure where that came from.

24 Q. But you would agree that Brown & Williamson had  
25 paid, by the time Exhibit 4453 was written, almost a

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1 million dollars to get its cigarettes into movies so  
2 that they'd be seen by the people who saw those  
3 films; right?

4 MR. RICHARDSON: Objection to the form of  
5 the question.

6 A. What I see is -- is a discussion of the payments  
7 made for the placement of Brown & Williamson products  
8 in the context of movies.

9 Q. And you also know that Brown & Williamson paid  
10 Sylvester Stallone half a million dollars to utilize  
11 Brown & Williamson's cigarettes in movies that he  
12 made in the early '80s; right?

13 A. When you say "utilize," --

14 Q. Smoked.

15 A. Not that I'm aware that he smoked a product,  
16 ma'am.

17 Q. All right. Well you're aware that Brown &  
18 Williamson paid him \$500,000 to use their cigarette  
19 products in movies he was going to be in; right?

20 A. I understand we paid Mr. Stallone a sum of money  
21 for the placement of Brown & Williamson brands or  
22 advertising in the context of the films.

23 Q. That means he might have one in his hand or a  
24 pack in his pocket, something like that?

25 A. No, I don't know. I don't know if that is true

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1 or not, ma'am.

2 Q. Well Brown & Williamson agreed to pay him  
3 \$500,000 to get their products placed in his film;  
4 right -- films?

5 A. Products or featured advertisements, yes.

6 Q. Sir, isn't it true that Brown & Williamson paid  
7 more money to get its cigarette products into movies  
8 than it has to try and prevent youth from smoking?

9 MR. RICHARDSON: Objection to the form of  
10 the question, lacks foundation.

11 A. I'm not sure of the -- what I would use as a  
12 basis for that, ma'am.

13 Q. Well sir, are you familiar with the amount of  
14 money that Brown & Williamson has spent in the last  
15 45 years to try and prevent youth from smoking?

16 A. No, ma'am, I'm not.

17 Q. All right. Let me show you what's previously  
18 been marked as Exhibit 602, and I'm -- Can you take  
19 it, sir?

20 I'm going to ask you to turn to the first tabbed  
21 page. No, the first tabbed page, sir.

22 A. Tabbed.

23 Q. Yes, sir.

24 MR. RICHARDSON: Do you have another copy  
25 of this document, counsel?

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1 MS. WIVELL: I'm afraid I don't. I keep  
2 giving them to defense counsel and I run out of  
3 copies.

4 MR. RICHARDSON: Okay. What exhibit number  
5 is it?

6 MS. WIVELL: 602.

7 MR. RICHARDSON: Okay.

8 Q. Sir, turning to the first tabbed page of Exhibit  
9 602, it is titled "Advertising R&D and Youth  
10 Prevention," and then the first name that appears  
11 under that heading is Brown & Williamson; right?

12 A. That is correct.

13 Q. All right. Can you tell me what figure is  
14 listed as the total youth prevention expenditure 1954  
15 to 1994 according to this document?

16 MR. RICHARDSON: Objection to the form of  
17 the question.

18 A. Okay. What I can report to you is the numbers  
19 shown on this graph. I don't know the basis for it,  
20 but I can report the number that is shown in this  
21 report, and also I -- this is the first time I've  
22 seen this.

23 Q. All right.

24 A. It --

25 Q. What number is there?

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1 A. The number is \$642,805.

2 Q. Now sir, you would agree that that is less than  
3 half the amount that Brown & Williamson paid  
4 Associated Film Promotions and Sylvester Stallone to  
5 get their cigarettes into the movies; right?

6 MR. RICHARDSON: Objection to the form of  
7 the question.

8 A. The amount represented in this report is less  
9 than the amount that was shown in this -- in 4453,  
10 ma'am.

11 Q. All right. Could you turn to the next tabbed  
12 page, sir.

13 MR. RICHARDSON: Again, Mr. Stowe, if it's  
14 necessary for you to respond to the questions, you  
15 should feel free to read the entire document.

16 Q. Sir, could you turn to the next tabbed page?  
17 What is the heading of that graph?

18 A. The heading is "Brown & Williamson Youth  
19 Prevention Expenditures to Total Domestic Sales, 1983  
20 to 1994."

21 Q. Now sir, it gives there the figure that you just  
22 read, \$642,805 as the total youth prevention  
23 expenditures; correct?

24 A. It was the total youth expenditures reported in  
25 the report, but I don't know the basis or foundation

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1 for those numbers.

2 Q. All right. And sir, if we look at this graph,  
3 the total youth prevention expenditures are indicated  
4 as a red line; right?

5 MR. RICHARDSON: Objection to the form of  
6 the question, lacks foundation:

7 A. There is a line on the chart but --

8 Q. And the total for Brown & Williamson domestic  
9 tobacco sales during the period 1983 to 1994 is  
10 indicated in green; right?

11 MR. RICHARDSON: Objection to the form of  
12 the question, lacks foundation, calls for  
13 speculation.

14 A. There is a number shown on the chart.

15 Q. Now sir, can you turn to the next tabbed page.  
16 What is the heading of that graph?

17 A. The heading of this page is "Brown & Williamson  
18 Youth Prevention Expenditures to Total Domestic  
19 Tobacco Sales 1954 to 1994."

20 Q. And again the total youth prevention  
21 expenditures set forth in this graph are indicated by  
22 the red line; right?

23 MR. RICHARDSON: Objection to the form of  
24 the question.

25 A. Difficult to read the chart, but there is a

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1 number that we have seen earlier referencing, again,  
2 youth prevention expenditures, but I'm not sure again  
3 of the basis for the number.

4 Q. Sir, could you turn to the last graph right  
5 before exhibit -- tab C. And that graph purports to  
6 show the total youth prevention expenditures,  
7 comparing them to the total advertising, marketing  
8 and promotional expenditures which Brown & Williamson  
9 spent between the years 1958 and 1994; right?

10 MR. RICHARDSON: Objection to the form of  
11 the question.

12 A. The graph I'm looking at is titled "Brown &  
13 Williamson Youth Prevention Expenditures to  
14 Advertising, Marketing and Promotion Expenditures,  
15 '58 to '94," but I have no basis to understand any  
16 of the numbers on this chart, ma'am.

17 Q. So you have no basis to disagree with any of the  
18 numbers on this chart, do you, sir?

19 A. I have no basis to agree with the numbers.

20 Q. You have no basis to disagree with them, do you,  
21 sir?

22 A. In the context of the question, I'm not sure the  
23 basis of either of the numbers, ma'am.

24 Q. All right. Well sir, do you know the total  
25 amount of advertising, marketing and promotional

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1 expenditures Brown & Williamson has made in the  
2 period 1958 to 1994?

3 A. No, ma'am, I don't.

4 Q. So you have no basis to dispute the seven  
5 billion six hundred -- I'm sorry.

6 You have no basis to dispute that figure that  
7 begins with a seven over there on the left-hand side  
8 of this graph, do you, sir?

9 A. To dispute it other than I'm not sure if it's  
10 correct, nor am I correct if the chart -- the number  
11 on the other side of the chart is equally as correct,  
12 ma'am.

13 Q. Well sir, according to this graph, if we assume  
14 it's true, the information that Brown & Williamson --  
15 the amount of money that Brown & Williamson spent on  
16 youth prevention during the periods 1958 to 1994 are  
17 shown by one red line; right?

18 MR. RICHARDSON: Objection to the form of  
19 the question, lacks foundation, calls for  
20 speculation.

21 A. Are you asking me to comment on this, presuming  
22 it's true, which I don't know for a fact if this is a  
23 true reflection of the chart, ma'am?

24 All I can state is the way this chart is  
25 reflected -- and I have no basis to know whether

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1 these numbers are correct or incorrect -- but as a  
2 statement of this, this is what this chart shows. So  
3 I can't presume or -- It would be a presumption or a  
4 speculation with no knowledge that either of these  
5 numbers are correct.

6 Q. Sir, would you agree that it would be improper  
7 for Brown & Williamson to target people under the age  
8 of 21 to sell its cigarettes to?

9 A. Yes, ma'am, I would.

10 MS. WIVELL: I have nothing further.

11 THE REPORTER: Off the record, please.

12 (Deposition concluded at approximately

13 1:10 p.m.)

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## 1 C E R T I F I C A T E

2 I, Debby J. Campeau, hereby certify that I  
3 am qualified as a verbatim shorthand reporter; that I  
4 took in stenographic shorthand the testimony of  
5 ROBERT D. STOWE at the time and place aforesaid; and  
6 that the foregoing transcript consisting of 154 pages  
7 is a true and correct, full and complete  
8 transcription of said shorthand notes, to the best of  
9 my ability.

10 Dated at Lino Lakes, Minnesota, this 1st  
11 day of October, 1997.

12

13

14

15 DEBBY J. CAMPEAU, RPR

16 Notary Public

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## 1                   S I G N A T U R E   P A G E

2                   I, ROBERT D. STOWE, the deponent, hereby  
3   certify that I have read the foregoing transcript,  
4   consisting of 154 pages, and that said transcript is  
5   a true and correct, full and complete transcription  
6   of my deposition, except per the attached  
7   corrections, if any.

8

9                   (Please check one.)

10                  \_\_\_ Yes, changes were made per the attached

11                  \_\_\_ (#) Signature Page Addendums.

12

13                  \_\_\_ I have made no changes.

14

15

16

17

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19

20

ROBERT D. STOWE

21

Deponent

22

Sworn and subscribed to before me this       day

23

of                   , 199\_\_.

24

Notary Public

25

My commission expires:

(DJC)

STIREWALT &amp; ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953